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H.R. 8617

THE FEDERAL EMPLOYEES' POLITICAL
ACTIVITIES ACT OF 1976

DOCUMENTARY BACKGROUND AND
LEGISLATIVE HISTORY

SUBCOMMITTEE ON EMPLOYEE POLITICAL RIGHTS
AND INTERGOVERNMENTAL PROGRAMS

OF THE

COMMITTEE ON POST OFFICE
AND CIVIL SERVICE
HOUSE OF REPRESENTATIVES

NINETY-FOURTH CONGRESS

SECOND SESSION



MAY 1976



Printed for the use of the Committee on Post Office and Civil Service

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U.S. GOVERNMENT PRINTING OFFICE

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FOREWORD

On April 29, 1976, the House of Representatives, by vote of 243-160, failed to override the President's veto of H.R. 8617, the Federal Employees' Political Activities Act of 1976. Thus, for the time being at least, modification of the Hatch Act was prevented. The law, which places severe constraints upon the right of Federal employees to participate in political activities, had been significantly amended only once since its enactment in 1938. In 1974, restraints upon State and local employees, who were supported by Federal funds, were removed with the exception that they could not be candidates for elective office.

The effort of the 94th Congress to modify the Hatch Act is an exciting and complex one, characterized by careful study and amendment of proposed legislation virtually every step of the way. Many views were considered and reconciled. I know that I speak for the vast majority of the Congress when I say that the final legislative product is an improved and more comprehensive piece of legislation than that which was originally introduced 15 months ago.

Almost without a doubt, there will be future attempts to modify the Hatch Act. To assist Members of Congress, staff members, and other interested persons in reviewing and understanding the process by which the final version of H.R. 8617 evolved, I have asked the staff of the Subcommittee on Employee Political Rights and Intergovernmental Programs of the Committee on Post Office and Civil Service to compile this documentary background and legislative history of H.R. 8617.

HON. WILLIAM L. CLAY,
*Chairman, Subcommittee on Employee Political Rights
and Intergovernmental Programs.*

BACKGROUND

Since 1791, the legislative and the executive branches of Government have struggled with the task of creating a proper balance between the rights of Federal employees to participate in political activities and the right of the public to the administration of its laws in a manner which inspires confidence in its integrity. Efforts at reform were spurred on by enactment of the Pendleton Act of 1883. That law created the U.S. Civil Service Commission and authorized the President to promulgate rules which would prohibit coercion and the misuse of official authority or influence.

By 1938, the Federal Government had expanded rapidly. Only about one-third of the Federal work force was under the merit system. A special Senate committee documented the existence of involuntary political contributions and coercion of employees. Major changes on political activities of Federal employees were recommended. As a result the Hatch Act, which prohibited active political management or campaigning by Federal employees, was enacted. The bill actually incorporated over 3,000 administrative determinations by the Civil Service Commission into the force of law. It was passed without debate or dissent in the Senate and without public hearings in the House.

In 1967, the bi-partisan independent Commission on Political Activities of Government Personnel recommended strengthening of sanctions against coercion and the expansion of the right of Federal employees to participate in voluntary political activities. Later, in 1973, the Supreme Court overturned a three-judge district court decision. The Court ruled that the Hatch Act was constitutional and that any changes in that law were the responsibility of the Congress.

The introduction of H.R. 3000 in the House of Representatives by Congressman William L. Clay (Mo.) and S. 372 in the Senate by Senator Gale McGee marked the beginning of the first major congressional effort to significantly expand the rights of Federal employees to participate more fully in the political life of the Nation. The Subcommittee on Employee Political Rights and Intergovernmental Programs of the House Committee on Post Office and Civil Service conducted 11 days of hearings on the bill and received in-person testimony from over 100 witnesses.

LEGISLATIVE HISTORY

H.R. 8617, THE FEDERAL EMPLOYEE'S POLITICAL ACTIVITIES ACT OF 1976

House Report: No. 94-444 (Committee on Post Office and Civil Service).

Senate Report: No. 94-512 (Committee on Post Office and Civil Service).

Conference Report: No. 94-943.

Veto message of the President: House Document No. 94-449.

Congressional Record:

Volume 121 (1975): Considered and passed House.

Volume 122 (1976):

March 9, 10, 11, Considered and passed Senate, amended.

March 30, Conference report considered and passed House.

March 31, Conference report considered and passed Senate.

April 29, President's veto considered and sustained in House.

EXISTING LAWS IN CHRONOLOGICAL ORDER

53 STAT. 1147

August 2, 1939

AN ACT

To prevent pernicious political activities.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be unlawful for any person to intimidate, threaten, or coerce, or to attempt to intimidate, threaten, or coerce, any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, or Member of the House of Representatives at any election held solely or in part for the purpose of selecting a President, a Vice President, a Presidential elector, or any Member of the Senate or any Member of the House of Representatives, Delegates or Commissioners from the Territories and insular possessions.

Sec. 2. It shall be unlawful for any person employed in any administrative position by the United States, or by any department, independent agency, or other agency of the United States (including any corporation controlled by the United States or any agency thereof, and any corporation all of the capital stock of which is owned by the United States or any agency thereof), to use his official authority for the purpose of interfering with, or affecting the election or the nomination of any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, or Member of the House of Representatives, Delegates or Commissioners from the Territories and insular possessions.

Sec. 3. It shall be unlawful for any person, directly or indirectly, to promise any employment, position, work, compensation, or other benefit, provided for or made possible in whole or in part by any Act of Congress, to any person as consideration, favor, or reward for any political activity or for the support of or opposition to any candidate or any political party in any election.

Sec. 4. Except as may be required by the provisions of subsection (b), section 9 of this Act, it shall be unlawful for any person to deprive, attempt to deprive, or threaten to deprive, by any means, any person of any employment, position, work, compensation, or other benefit provided for or made possible by any Act of Congress appropriating funds for work relief or relief purposes, on account of race, creed, color, or any political activity, support of, or opposition to any candidate or any political party in any election.

Sec. 5. It shall be unlawful for any person to solicit or receive or be in any manner concerned in soliciting or receiving any assessment, subscription, or contribution for any political purpose whatever from any person known by him to be entitled to or receiving compensation, employment, or other benefit provided for or made possible by any Act of Congress appropriating funds for work relief or relief purposes.

Sec. 6. It shall be unlawful for any person for political purposes to furnish or to disclose, or to aid or assist in furnishing or disclosing, any list or names of persons receiving compensation, employment, or benefits provided for or made possible by any Act of Congress appropriating, or authorizing the appropriation of, funds for work relief or relief purposes, to a political candidate, committee, campaign manager, or to any person for delivery to a political candidate, committee, or campaign manager, and it shall be unlawful for any person to receive any such list or names for political purposes.

Sec. 7. No part of any appropriation made by any Act, heretofore or hereafter enacted, making appropriations for work relief, relief, or otherwise to increase employment by providing loans and grants for public-works projects, shall be used for the purpose of, and no authority conferred by any such Act upon any person shall be exercised or administered for the purpose of, interfering with, restraining, or coercing any individual in the exercise of his right to vote at any election.

Sec. 8. Any person who violates any of the foregoing provisions of this Act upon conviction thereof shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.

Sec. 9. (a) It shall be unlawful for any person employed in the executive branch of the Federal Government, or any agency or department thereof, to use his official authority or influence for the purpose of interfering with an election or affecting the result thereof. No officer or employee in the executive branch of the Federal Government, or any agency or department thereof, shall take any active part in political management or in political campaigns. All such persons shall retain the right to vote as they may choose and to express their opinions on all political subjects. For the purposes of this section the term "officer" or "employee" shall not be construed to include (1) the President and Vice President of the United States; (2) persons whose compensation is paid from the appropriation for the office of the President; (3) heads and assistant heads of executive departments; (4) officers who are appointed by the President, by and with the advice and consent of the Senate, and who determine policies to be pursued by the United States in its relations with foreign powers or in the Nation-wide administration of Federal laws.

(b) Any person violating the provisions of this section shall be immediately removed from the position or office held by him, and thereafter no part of the funds appropriated by any Act of Congress for such position or office shall be used to pay the compensation of such person.

Sec. 9A. (1) It shall be unlawful for any person employed in any capacity by any agency of the Federal Government, whose compensation, or any part thereof is paid from funds authorized or appropriated by any Act of Congress, to have membership in any political party or organization which advocates the overthrow of our constitutional form of government in the United States.

(2) Any person violating the provisions of this section shall be immediately removed from the position or office held by him, and thereafter no part of the funds appropriated by any Act of Congress for such position or office shall be used to pay the compensation of such person.

Sec. 10. All provisions of this Act shall be in addition to, not in substitution for, of existing law.

Sec. 11. If any provision of this Act, or the application of such provision to any person or circumstance, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

Approved, August 2, 1939, 11:50 a. m., E. S. T.

54 STAT. 767

July 19, 1940

AN ACT

To extend to certain officers and employees in the several States and the District of Columbia the provisions of the Act entitled "An Act to prevent pernicious political activities", approved August 2, 1939.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2 of the Act entitled "An Act to prevent pernicious political activities", approved August 2, 1939, is amended to read as follows:

"Sec. 2. It shall be unlawful for (1) any person employed in any administrative position by the United States, or by any department, independent agency, or other agency of the United States (including any corporation controlled by the United States or any agency thereof, and any corporation all of the capital stock of which is owned by the United States or any agency thereof), or (2) any person employed in any administrative position by any State, by any political subdivision or municipality of any State, or by any agency of any State or any of its political subdivisions or municipalities (including any corporation controlled by any State or by any such political subdivision, municipality, or agency, and any corporation all of the capital stock of which is owned by any State or by any such political subdivision, municipality, or agency), in connection with any activity which is financed in whole or in part by loans or grants made by the United States, or by any such department, independent agency, or other agency of the United States, to use his official authority for the purpose of interfering with, or affecting, the election or the nomination of any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, Member of the House of Representatives, or Delegate or Resident Commissioner from any Territory or insular possession."

Sec. 2. The third sentence of section 9 (a) of such Act of August 2, 1939, is amended to read as follows: "All such persons shall retain the right to vote as they may choose and to express their opinions on all political subjects and candidates."

Sec. 3. Section 10 of such Act of August 2, 1939, is amended to read as follows:

"Sec. 10. The provisions of this Act shall be in addition to and not in substitution for any other provision of law."

Sec. 4. Such Act of August 2, 1939, is further amended by adding at the end thereof the following new sections:

"Sec. 12. (a) No officer or employee of any State or local agency whose principal employment is in connection with any activity which is financed in whole or in part by loans or grants made by the United States or by any Federal agency shall (1) use his official authority or influence for the purpose of interfering with an election or a nomination for office, or affecting the result thereof, or (2) directly or indirectly coerce, attempt to coerce, command, or advise any other such officer or employee to pay, lend, or contribute any part of his salary or compensation or anything else of value to any party, committee, organization, agency, or person for political purposes. No such officer or employee shall take any active part in political management or in political campaigns. All such persons shall retain the right to vote as they may choose and to express their opinions on all political subjects and candidates. For the purposes of the second sentence of this subsection, the term 'officer or employee' shall not be construed to include (1) the Governor or the Lieutenant Governor of any State or any person who is authorized by law to act as Governor, or the mayor of any city; (2) duly elected heads of executive departments of any State or municipality who are not classified under a State or municipal merit or civil-service system; (3) officers holding elective offices.

"(b) If any Federal agency charged with the duty of making any loan or grant of funds of the United States for use in any activity by any officer or employee to whom the provisions of subsection (a) are applicable has reason to believe that any such officer or employee has violated the provisions of such subsection, it shall make a report with respect thereto to the United States Civil Service Commission (hereinafter referred to as the 'Commission'). Upon the receipt of any such report, or upon the receipt of any other information which seems to the Commission to warrant an investigation, the Commission shall fix a time and place for a hearing, and shall by registered mail send to the officer or employee charged with the violation and to the State or local agency employing such officer or employee a notice setting forth a summary of the alleged violation and the time and place of such hearing. At such hearing (which shall be not earlier than ten days after the mailing of such notice) either the officer or employee or the State or local agency, or both, may appear with counsel and be heard. After such hearing, the Commission shall determine whether any violation of such subsection has occurred and whether such violation, if any, warrants the removal of the officer or employee by whom it was committed from his office or employment, and shall by registered mail notify such officer or employee and the appropriate State or local agency of such determination. If in any case the Commission finds that such officer or employee has not been removed from his office or employment within thirty days

after notice of a determination by the Commission that such violation warrants his removal, or that he has been so removed and has subsequently (within a period of eighteen months) been appointed to any office or employment in any State or local agency in such State, the Commission shall make and certify to the appropriate Federal agency an order requiring it to withhold from its loans or grants to the State or local agency to which such notification was given an amount equal to two years' compensation at the rate such officer or employee was receiving at the time of such violation; except that in any case of such a subsequent appointment to a position in another State or local agency which receives loans or grants from any Federal agency, such order shall require the withholding of such amount from such other State or local agency:

Provided, That in no event shall the Commission require any amount to be withheld from any loan or grant pledged by a State or local agency as security for its bonds or notes if the withholding of such amount would jeopardize the payment of the principal or interest on such bonds or notes. Notice of any such order shall be sent by registered mail to the State or local agency from which such amount is ordered to be withheld. The Federal agency to which such order is certified shall, after such order becomes final, withhold such amount in accordance with the terms of such order. Except as provided in subsection (c), any determination or order of the Commission shall become final upon the expiration of thirty days after the mailing of notice of such determination or order.

“(c) Any party aggrieved by any determination or order of the Commission under subsection (b) may, within thirty days after the mailing of notice of such determination or order, institute proceedings for the review thereof by filing a written petition in the district court of the United States for the district in which such officer or employee resides; but the commencement of such proceedings shall not operate as a stay of such determination or order unless (1) it is specifically so ordered by the court, and (2) such officer or employee is suspended from his office or employment during the pendency of such proceedings. A copy of such petition shall forthwith be served upon the Commission, and thereupon the Commission shall certify and file in the court a transcript of the record upon which the determination or the order complained of was made. The review by the court shall be on the record entire, including all of the evidence taken on the hearing, and shall extend to questions of fact and questions of law. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence may materially affect the result of the proceedings and that there were reasonable grounds for failure to adduce such evidence in the hearing before the Commission, the court may direct such additional evidence to be taken before the Commission in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings of fact or its determination or order by reason of the additional evidence so taken and shall file with the court such modified findings, determination, or order, and any such modified findings of fact, if supported by substantial evidence, shall be conclusive. The court shall affirm the Commission's determination or order, or its modified determination or order, if the court determines that the same is in accordance with law. If the court determines that any such determination or order, or modified determination or order, is not in accordance with

law, the court shall remand the proceeding to the Commission with directions either to make such determination or order as the court shall determine to be in accordance with law or to take such further proceedings as, in the opinion of the court, the law requires. The judgement and decree of the court shall be final, subject to review by the appropriate circuit court of appeals as in other cases, and the judgement and decree of such circuit court of appeals shall be final, subject to review by the Supreme Court of the United States on certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U.S.C., 1934 edition, title 28, secs. 346 and 347). If any provision of this subsection is held to be invalid as applied to any party with respect to any determination or order of the Commission, such determination or order shall thereupon become final and effective as to such party in the same manner as if such provision had not been enacted.

“(d) The Commission is authorized to adopt such reasonable procedure and rules and regulations as it deems necessary to execute its functions under this section. The Civil Service Commission shall have power to require by subpoena the attendance and testimony of witnesses and the production of all documentary evidence relating to any matter pending, as a result of this Act, before the Commission. Any member of the Commission may sign subpoenas, and members of the Commission and its examiners when authorized by the Commission may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such documentary evidence may be required from any place in the United States at any designated place of hearing. In case of disobedience to a subpoena, the Commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence. Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any person, issue an order requiring such person to appear before the Commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. The Commission may order testimony to be taken by deposition in any proceeding or investigation, which as a result of this Act, is pending before the Commission at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the Commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence before the Commission as hereinbefore provided. No person shall be excused from attending and testifying or from producing documentary evidence or in obedience to a subpoena on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled to testify, or produce evidence, documentary or otherwise, before the Commission in obedience to a subpoena issued by it: *Provided*,

That no person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

“(e) The provisions of the first two sentences of subsection (a) of this section shall not apply to any officer or employee who exercises no functions in connection with any activity of a State or local agency which is financed in whole or in part by loans or grants made by the United States or by any Federal agency.

“(f) For the purposes of this section—

“(1) The term ‘State or local agency’ means the executive branch of any State, or of any municipality or other political subdivision of such State, or any agency or department thereof.

“(2) The term ‘Federal agency’ includes any executive department, independent establishment, or other agency of the United States (except a member bank of the Federal Reserve System).

“Sec. 13. (a) It is hereby declared to be a pernicious political activity, and it shall hereafter be unlawful, for any person, directly or indirectly, to make contributions in an aggregate amount in excess of \$5,000, during any calendar year, or in connection with any campaign for nomination or election, to or on behalf of any candidate for an elective Federal office (including the offices of President of the United States and Presidential and Vice Presidential electors), or to or on behalf of any committee or other organization engaged in furthering, advancing, or advocating the nomination or election of any candidate for any such office or the success of any national political party. This subsection shall not apply to contributions made to or by a State or local committee or other State or local organization.

“(b) For the purposes of this section—

“(1) The term ‘person’ includes an individual, partnership, committee, association, corporation, and any other organization or group of persons.

“(2) The term ‘contribution’ includes a gift, subscription, loan, advance, or deposit of money, or anything of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make a contribution.

“(c) It is further declared to be a pernicious political activity, and it shall hereafter be unlawful for any person, individual, partnership, committee, association, corporation, and any other organization or group of persons to purchase or buy any goods, commodities, advertising, or articles of any kind or description where the proceeds of such a purchase, or any portion thereof, shall directly or indirectly inure to the benefit of or for any candidate for an elective Federal office (including the offices of President of the United States, and Presidential and Vice Presidential electors) or any political committee or other political organization engaged in furthering, advancing, or advocating the nomination or election of any candidate for any such office or the success of any national political party: *Provided*, That nothing in this sentence shall be construed to interfere with the usual and known business, trade, or profession of any candidate.

“(d) Any person who engages in a pernicious political activity in violation of any provision of this section, shall upon conviction thereof be fined not more than \$5,000 or imprisoned for not more than five years. In all cases of violations of this section by a partnership, committee, association, corporation, or other organization

or group of persons, the officers, directors, or managing heads thereof who knowingly and willfully participate in such violation, shall be subject to punishment as herein provided.

"(e) Nothing in this section shall be construed to permit the making of any contribution which is prohibited by any provision of law in force on the date this section takes effect. Nothing in this Act shall be construed to alter or amend any provisions of the Federal Corrupt Practices Act of 1925, or any amendments thereto.

"Sec. 14. For the purposes of this Act, persons employed in the government of the District of Columbia shall be deemed to be employed in the executive branch of the Government of the United States, except that for the purposes of the second sentence of section 9 (a) the Commissioners and the Recorder of Deeds of the District of Columbia shall not be deemed to be officers or employees.

"Sec. 15. The provisions of this Act which prohibit persons to whom such provisions apply from taking any active part in political management or in political campaigns shall be deemed to prohibit the same activities on the part of such persons as the United States Civil Service Commission has heretofore determined are at the time this section takes effect prohibited on the part of employees in the classified civil service of the United States by the provisions of the civil-service rules prohibiting such employees from taking any active part in political management or in political campaigns.

"Sec. 16. Whenever the United States Civil Service Commission determines that, by reason of special or unusual circumstances which exist in any municipality or other political subdivision, in the immediate vicinity of the National Capital in the States of Maryland and Virginia or in municipalities the majority of whose voters are employed by the Government of the United States, it is in the domestic interest of persons to whom the provisions of this Act are applicable, and who reside in such municipality or political subdivision, to permit such persons to take an active part in political management or in political campaigns involving such municipality or political subdivision, the Commission is authorized to promulgate regulations permitting such persons to take an active part in such political management and political campaigns to the extent the Commission deems to be in the domestic interest of such persons.

"Sec. 17. Nothing in the second sentence of section 12 (a) of this Act shall be construed to prevent or prohibit any officer or employee of a State or local agency (as defined in section 12 (f)) from continuing, until the election in connection with which he was nominated, to be a bona fide candidate for election to any public office and from engaging in any political activity in furtherance of his candidacy for such public office, if (1) he was nominated before the date of the enactment of this Act, and (2) upon his election to such public office he resigns from the office or employment in which he was employed prior to his election, in a State or local agency (as defined in section 12 (f)).

"Sec. 18. Nothing in the second sentence of section 9 (a) or in the second sentence of section 12 (a) of this Act shall be construed to prevent or prohibit any person subject to the provisions of this Act from engaging in any political activity (1) in connection with any election and the preceding campaign if none of the candidates is to

be nominated or elected at such election as representing a party any of whose candidates for presidential elector received votes in the last preceding election at which presidential electors were selected, or (2) in connection with any question which is not specifically identified with any National or State political party. For the purposes of this section, questions relating to constitutional amendments, referendums, approval of municipal ordinances, and others of a similar character, shall not be deemed to be specifically identified with any National or State political party.

"Sec. 19. As used in this Act, the term 'State' means any State, Territory or possession of the United States."

Sec. 5. (a) No person or firm entering into any contract with the United States or any department or agency thereof, either for the rendition of personal services or furnishing any material, supplies, or equipment to the United States or any department or agency thereof, or selling any land or building to the United States or any department or agency thereof, if payment for the performance of such contract or payment for such material, supplies, equipment, land, or building is to be made in whole or in part from funds appropriated by the Congress, shall, during the period of negotiation for, or performance under such contract or furnishing of material, supplies, equipment, land, or buildings, directly, or indirectly, make any contribution of money or any other thing of value, or promise expressly or impliedly to make any such contribution, to any political party, committee, or candidate for public office or to any person for any political purpose or use; nor shall any person knowingly solicit any such contribution from any such person or firm, for any such purpose during any such period. Any person who violates the provisions of this section shall, upon conviction thereof, be fined not more than \$5,000 or imprisoned not more than five years.

(b) Nothing in this section shall be construed to permit any action which is prohibited by any provision of law in force on the date this section takes effect.

Sec. 6. Such Act of August 2, 1939, is further amended by adding at the end thereof the following new section:

"Sec. 20. No political committee shall receive contributions aggregating more than \$3,000,000, or make expenditures aggregating more than \$3,000,000, during any calendar year. For the purposes of this section, any contributions received and any expenditures made on behalf of any political committee with the knowledge and consent of the chairman or treasurer of such committee shall be deemed to be received or made by such committee. Any violation of this section by any political committee shall be deemed also to be a violation of this section by the chairman and the treasurer of such committee and by any other person responsible for such violation. Terms used in this section shall have the meaning assigned to them in section 302 of the Federal Corrupt Practices Act, 1925, and the penalties provided in such Act shall apply to violations of this section."

Approved, July 19, 1940.

64 STAT. 475
August 25, 1950

AN ACT

To amend the Hatch Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 9 of the Act entitled "An Act to prevent pernicious political activities", approved August 2, 1939, is amended by striking out subsection (b) and inserting in lieu thereof the following subsections:

"(b) Any person violating the provisions of this section shall be removed immediately from the position or office held by him, and thereafter no part of the funds appropriated by any Act of Congress for such position or office shall be used to pay the compensation of such person: *Provided, however*, That the United States Civil Service Commission finds by unanimous vote that the violation does not warrant removal, a lesser penalty shall be imposed by direction of the Commission: *Provided further*, That in no case shall the penalty be less than ninety days' suspension without pay: *And provided further*, That in the case of any person who has heretofore been removed from the service under the provisions of this section, the Commission shall upon request of said person reopen and reconsider the record in such case. If it shall find by a unanimous vote that the acts committed were such as to warrant a penalty of less than removal it shall issue an order revoking the restriction against reemployment in the position from which removed, or in any other position for which he may be qualified, but no such revocation shall become effective until at least ninety days have elapsed following the date of the removal of such person from office.

"(c) At the end of each fiscal year the Commission shall report to the President for transmittal to the Congress the names, addresses, and nature of employment of all persons with respect to whom action has been taken by the Commission under the terms of this section, with a statement of the facts upon which action was taken, and the penalty imposed."

Sec. 2. Section 612 of title 18, United States Code, is hereby amended to read as follows:

"§ 612. Publication or distribution of political statements.

"Whoever willfully publishes or distributes or causes to be published or distributed, or for the purpose of publishing or distributing the same, knowingly deposits for mailing or delivery or causes to be deposited for mailing or delivery, or, except in cases of employees of the Post Office Department in the official discharge of their duties, knowingly transports or causes to be transported in interstate commerce any card, pamphlet, circular, poster, dodger, advertisement, writing, or other statement relating to or concerning any person who has publicly declared his intention to seek the office of President, or Vice President of the United States, or Senator or Representative in, or Delegate or Resident Commissioner to Congress, in a primary, general, or special election, or convention of a political party, or has caused or permitted his intention to do so to

be publicly declared, which does not contain the names of the persons, associations, committees, or corporations responsible for the publication or distribution of the same, and the names of the officers of each such association, committee, or corporation, shall be fined not more than \$1,000 or imprisoned not more than one year, or both."

Approved August 25, 1950.

76 STAT. 750
October 5, 1962

AN ACT

To amend section 9(b) of the Act entitled "An Act to prevent pernicious political activities" (the Hatch Political Activities Act) to reduce the requirement that the Civil Service Commission impose no penalty less than thirty days' suspension of any violation of section 9 of the Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 9(b) of the Act entitled "An Act to prevent pernicious political activities", approved August 2, 1939, as amended (5 U.S.C. 118i(b)), is amended by striking out "*Provided further*, That in no case shall the penalty be less than ninety days' suspension without pay:" and inserting in lieu thereof "*Provided further*, That in no case shall the penalty be less than thirty days' suspension without pay:".

Approved October 5, 1962.

AMENDMENT TO THE ECONOMIC
OPPORTUNITY ACT OF 1964

PUBLIC LAW 89-794—NOV. 8, 1966

ADMINISTRATION—POLITICAL ACTIVITIES

Sec. 604. Section 603 of the Act is amended to read as follows:

“POLITICAL ACTIVITIES

“Sec. 603. (a) For purposes of chapter 15 of title 5 of the United States Code any overall community action agency which assumes responsibility for planning, developing, and coordinating community-wide antipoverty programs and receives assistance under this Act shall be deemed to be a State or local agency; and for purposes of clauses (1) and (2) of section 1502(a) of such title any agency receiving assistance under this Act (other than *pari C* of title I) shall be deemed to be a State or local agency.

“(b) The Director, after consultation with the Civil Service Commission, is authorized to issue such regulations or impose such requirements as may be necessary or appropriate to supplement the provisions of subsection (a) of this section or otherwise to insure that programs assisted under this Act are not carried on in a manner involving the use of program funds, the provision of services, or the employment or assignment of personnel in a manner supporting, or resulting in the identification of such program with, any partisan political activity or any activity designed to further the election or defeat of any candidate for public office.”

PUBLIC LAW 90-222, 81 STAT. 714
December 23, 1967

AMENDMENT TO ECONOMIC OPPORTUNITY
ACT OF 1964

Sec. 108. (a) Section 601(a) of the Economic Opportunity Act of 1964 is amended by striking out “four” in the third sentence and inserting in lieu thereof “five”.

(b) Section 602(b) of such Act is amended by inserting “(1)” after (b)”; by inserting before “compensate” the following: “except that no individual may be employed under the authority of this subsection for more than 100 days in any fiscal

year; (2)"; and by striking out "and" after "travel time" and inserting in lieu thereof "and (3)".

(c) Section 603(b) of such Act is amended to read as follows:

"(b) Programs assisted under this Act shall not be carried on in a manner involving the use of program funds, the provision of services, or the employment or assignment of personnel in a manner supporting or resulting in the identification of such programs with (1) any partisan or nonpartisan political activity or any other political activity associated with a candidate, or contending faction or group, in an election for public or party office, (2) any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election, or (3) any voter registration activity. The Director, after consultation with the Civil Service Commission, shall issue rules and regulations to provide for the enforcement of this section, which shall include provisions for summary suspension of assistance or other action necessary to permit enforcement on an emergency basis."

Pub. Law 89-554

September 6, 1966

Title 5, United States Code

CHAPTER 15—POLITICAL ACTIVITY OF CERTAIN STATE AND LOCAL EMPLOYEES

Sec.

1501. Definitions.

1502. Influencing elections; taking part in political campaigns; prohibitions; exceptions.

1503. Nonpartisan political activity permitted.

1504. Investigations; notice of hearing.

1505. Hearings; adjudications; notice of determinations.

1506. Orders; withholding loans or grants; limitations.

1507. Subpenas and depositions.

1508. Judicial review.

§ 1401. Definitions

For the purpose of this chapter—

(1) "State" means a State or territory or possession of the United States;

(2) "State or local agency" means the executive branch of a State, municipality, or other political subdivision of a State, or an agency or department thereof;

(3) "Federal agency" means an Executive agency or other agency of the United States, but does not include a member bank of the Federal Reserve System;

(4) "State or local officer or employee" means an individual employed by a State or local agency whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a Federal agency, but does not include—

(A) an individual who exercises no functions in connection with that activity; or

(B) an individual employed by an educational or research institution, establishment, agency, or system which is supported in whole or in part by a State or political subdivision thereof, or by a recognized religious, philanthropic, or cultural organization; and

(5) the phrase "an active part in political management or in political campaigns" means those acts of political management or political campaigning which were prohibited on the part of employees in the competitive service before July 19, 1940, by determinations of the Civil Service Commission under the rules prescribed by the President.

§ 1502. Influencing elections; taking part in political campaigns; prohibitions; exceptions

(a) A State or local officer or employee may not—

(1) use his official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office;

(2) directly or indirectly coerce, attempt to coerce, command, or advise a State or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political purposes; or

(3) take an active part in political management or in political campaigns.

(b) A State or local officer or employee retains the right to vote as he chooses and to express his opinions on political subjects and candidates.

(c) Subsection (a)(3) of this section does not apply to—

(1) the Governor or Lieutenant Governor of a State or an individual authorized by law to act as Governor;

(2) the mayor of a city;

(3) a duly elected head of an executive department of a State or municipality who is not classified under a State or municipal merit or civil-service system; or

(4) an individual holding elective office.

§ 1503. Nonpartisan political activity permitted

Section 1502(a)(3) of this title does not prohibit political activity in connection with—

(1) an election and the preceding campaign if none of the candidates is to be nominated or elected at that election as representing a party any of whose candidates for presidential elector received votes in the last preceding election at which presidential electors were selected; or

(2) a question which is not specifically identified with a National or State political party.

For the purpose of this section, questions relating to constitutional amendments, referendums, approval of municipal ordinances, and others of a similar character, are deemed not specifically identified with a National or State political party.

§ 1504. Investigations; notice of hearing

When a Federal agency charged with the duty of making a loan or grant of funds of the United States for use in an activity by a State or local officer or employee has reason to believe that the officer or employee has violated section 1502 of this title, it shall report the matter to the Civil Service Commission. On receipt of the report, or on receipt of other information which seems to the Commission to warrant an investigation, the Commission shall -

- (1) fix a time and place for a hearing; and
- (2) send, by registered or certified mail, to the officer or employee charged with the violation and to the State or local agency employing him a notice setting forth a summary of the alleged violation and giving the time and place of the hearing.

The hearing may not be held earlier than 10 days after the mailing of the notice.

§ 1505. Hearings; adjudications; notice of determinations

Either the State or local officer or employee or the State or local agency employing him, or both, are entitled to appear with counsel at the hearing under section 1504 of this title, and be heard. After this hearing, the Civil Service Commission shall -

- (1) determine whether a violation of section 1502 of this title has occurred;
- (2) determine whether the violation warrants the removal of the officer or employee from his office or employment; and
- (3) notify the officer or employee and the agency of the determination by registered or certified mail.

§ 1506. Orders; withholding loans or grants; limitations

(a) When the Civil Service Commission finds -

- (1) that a State or local officer or employee has not been removed from his office or employment within 30 days after notice of a determination by the Commission that he has violated section 1502 of this title and that the violation warrants removal; or
- (2) that the State or local officer or employee has been removed and has been appointed within 18 months after his removal to an office or employment in the same State in a State or local agency which does not receive loans or grants from a Federal agency;

the Commission shall make and certify to the appropriate Federal agency an order requiring that agency to withhold from its loans or grants to the State or local agency to which notice was given an amount equal to 2 years' pay at the rate the officer or employee was receiving at the time of the violation. When the State or local agency to which appointment within 18 months after removal has been made is one that receives loans or grants from a Federal agency, the Commission order shall direct that the withholding be made from the State or local agency.

(b) Notice of the order shall be sent by registered or certified mail to the State or local agency from which the amount is ordered to be withheld. After the order becomes final, the Federal agency to which the order is certified shall withhold the

amount in accordance with the terms of the order. Except as provided by section 1508 of this title, a determination or order of the Commission becomes final at the end of 30 days after mailing the notice of the determination or order.

(c) The Commission may not require an amount to be withheld from a loan or grant pledged by a State or local agency as security for its bonds or notes if the withholding of that amount would jeopardize the payment of the principal or interest on the bonds or notes.

§ 1507. Subpenas and depositions

(a) The Civil Service Commission may require by subpoena the attendance and testimony of witnesses and the production of documentary evidence relating to any matter before it as a result of this chapter. Any member of the Commission may sign subpoenas, and members of the Commission and its examiners when authorized by the Commission may administer oaths, examine witnesses, and receive evidence. The attendance of witnesses and the production of documentary evidence may be required from any place in the United States at the designated place of hearing. In case of disobedience to a subpoena, the Commission may invoke the aid of a court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence. In case of contumacy or refusal to obey a subpoena issued to a person, the United States District Court within whose jurisdiction the inquiry is carried on may issue an order requiring him to appear before the Commission, or to produce documentary evidence if so ordered, or to give evidence concerning the matter in question; and any failure to obey the order of the court may be punished by the court as a contempt thereof.

(b) The Commission may order testimony to be taken by deposition at any stage of a proceeding or investigation before it as a result of this chapter. Depositions may be taken before an individual designated by the Commission and having the power to administer oaths. Testimony shall be reduced to writing by the individual taking the deposition, or under his direction, and shall be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence before the Commission as provided by this section.

(c) A person may not be excused from attending and testifying or from producing documentary evidence or in obedience to a subpoena on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled to testify, or produce evidence, documentary or otherwise, before the Commission in obedience to a subpoena issued by it. A person so testifying is not exempt from prosecution and punishment for perjury committed in so testifying.

§ 1508. Judicial review

A party aggrieved by a determination or order of the Civil Service Commission under section 1504, 1505, or 1506 of this title may, within 30 days after the mailing of notice of the determination or order, institute proceedings for review thereof by filing a petition in the United States District Court for the district in which the State or local officer or employee resides. The institution of the proceedings does not operate as a stay of the determination or order unless—

(1) the court specifically orders a stay; and

(2) the officer or employee is suspended from his office or employment while the proceedings are pending.

A copy of the petition shall immediately be served on the Commission, and thereupon the Commission shall certify and file in the court a transcript of the record on which the determination or order was made. The court shall review the entire record including questions of fact and questions of law. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that the additional evidence may materially affect the result of the proceedings and that there were reasonable grounds for failure to adduce this evidence in the hearing before the Commission, the court may direct that the additional evidence be taken before the Commission in the manner and on the terms and conditions fixed by the court. The Commission may modify its findings of fact or its determination or order in view of the additional evidence and shall file with the court the modified findings, determination, or order; and the modified findings of fact, if supported by substantial evidence, are conclusive. The court shall affirm the determination or order, or the modified determination or order, if the court determines that it is in accordance with law. If the court determines that the determination or order, or the modified determination or order, is not in accordance with law, the court shall remand the proceeding to the Commission with directions either to make a determination or order determined by the court to be lawful or to take such further proceedings as, in the opinion of the court, the law requires. The judgment and decree of the court are final, subject to review by the appropriate United States Court of Appeals as in other cases, and the judgment and decree of the court of appeals are final, subject to review by the Supreme Court of the United States on certiorari or certification as provided by section 1254 of title 28. If a provision of this section is held to be invalid as applied to a party by a determination or order of the Commission, the determination or order becomes final and effective as to that party as if the provision had not been enacted.

Pub. Law 89-554

September 6, 1966

Title 5, United States Code

SUBCHAPTER III—POLITICAL ACTIVITIES

§ 7321. Political contributions and services

The President may prescribe rules which shall provide, as nearly as conditions of good administration warrant, that an employee in an Executive agency or in the competitive service is not obliged, by reason of that employment, to contribute to a political fund or to render political service, and that he may not be removed or otherwise prejudiced for refusal to do so.

§ 7322. Political use of authority or influence; prohibition

The President may prescribe rules which shall provide, as nearly as conditions of good administration warrant, that an employee in an Executive agency or in the competitive service may not use his official authority or influence to coerce the political action of a person or body.

§ 7323. Political contributions; prohibition

An employee in an Executive agency (except one appointed by the President, by and with the advice and consent of the Senate) may not request or receive from, or give to, an employee, a Member of Congress, or an officer of a uniformed service a thing of value for political purposes. An employee who violates this section shall be removed from the service.

§ 7324. Influencing elections; taking part in political campaigns; prohibitions; • exceptions

(a) An employee in an Executive agency or an individual employed by the government of the District of Columbia may not—

(1) use his official authority or influence for the purpose of interfering with or affecting the result of an election; or

(2) take an active part in political management or in political campaigns.

For the purpose of this subsection, the phrase “an active part in political management or in political campaigns” means those acts of political management or political campaigning which were prohibited on the part of employees in the competitive service before July 19, 1940, by determinations of the Civil Service Commission under the rules prescribed by the President.

(b) An employee or individual to whom subsection (a) of this section applies retains the right to vote as he chooses and to express his opinion on political subjects and candidates.

(c) Subsection (a) of this section does not apply to an individual employed by an educational or research institution, establishment, agency, or system which is supported in whole or in part by the District of Columbia or by a recognized religious, philanthropic, or cultural organization.

(d) Subsection (a)(2) of this section does not apply to—

(1) an employee paid from the appropriation for the office of the President;

(2) the head or the assistant head of an Executive department or military department;

(3) an employee appointed by the President, by and with the advice and consent of the Senate, who determines policies to be pursued by the United States in its relations with foreign powers or in the nationwide administration of Federal laws;

(4) the Commissioners of the District of Columbia; or

(5) the Recorder of Deeds of the District of Columbia.

§ 7325. Penalties

An employee or individual who violates section 7324 of this title shall be removed from his position, and funds appropriated for the position from which removed thereafter may not be used to pay the employee or individual. However, if the Civil Service Commission finds by unanimous vote that the violation does not warrant removal, a penalty of not less than 30 days' suspension without pay shall be imposed by direction of the Commission.

§ 7326. Nonpartisan political activity permitted

Section 7324(a)(2) of this title does not prohibit political activity in connection with—

(1) an election and the preceding campaign if none of the candidates is to be nominated or elected at that election as representing a party any of whose candidates for presidential elector received votes in the last preceding election at which presidential electors were selected; or

(2) a question which is not specifically identified with a National or State political party or political party of a territory or possession of the United States. For the purpose of this section, questions relating to constitutional amendments, referendums, approval of municipal ordinances, and others of a similar character, are deemed not specifically identified with a National or State political party or political party of a territory or possession of the United States.

§ 7327. Political activity permitted; employees residing in certain municipalities

(a) Section 7324 (a)(2) of this title does not apply to an employee of The Alaska Railroad who resides in a municipality on the line of the railroad in respect to political activities involving that municipality.

(b) The Civil Service Commission may prescribe regulations permitting employees and individuals to whom section 7324 of this title applies to take an active part in political management and political campaigns involving the municipality or other political subdivision in which they reside, to the extent the Commission considers it to be in their domestic interest, when—

(1) the municipality or political subdivision is in Maryland or Virginia and in the immediate vicinity of the District of Columbia, or is a municipality in which the majority of voters are employed by the Government of the United States; and

(2) the Commission determines that because of special or unusual circumstances which exist in the municipality or political subdivision it is in the domestic interest of the employees and individuals to permit that political participation.

EMERGENCY EMPLOYMENT ACT OF 1971

PUBLIC LAW 92-54—JULY 12, 1971

Political activities, prohibition.

"Sec. 12. (h) The Secretary shall not provide financial assistance for any program under this Act which involves political activities; and neither the program, the funds provided therefor, nor personnel employed in the administration thereof, shall be, in any way or to any extent, engaged in the conduct of political activities in contravention of chapter 15 of title 5, United States Code."

PUBLIC LAW 93-268, 88 STAT. 85

April 17, 1974

AN ACT

Sec. 4. (a) Section 7324(d) (4) of title 5, United States Code, is amended to read as follows:

"(4) the Mayor of the District of Columbia, the members of the Council of the District of Columbia, or the Chairman of the Council of the District of Columbia, as established by the District of Columbia Self-Government and Governmental Reorganization Act; or".

(b) Notwithstanding any other provision of law, the provisions of section 7324 a) (2) of title 5, United States Code, shall not be applicable to the Commissioner of the District of Columbia or the members of the District of Columbia Council (including the Chairman and Vice Chairman), as established by Reorganization Plan Numbered 3 of 1967.

Oct. 15, 1974

FEDERAL ELECTION CAMPAIGN ACT AMENDMENTS OF 1974

POLITICAL ACTIVITIES BY STATE AND LOCAL OFFICERS AND EMPLOYEES

Sec. 401. (a) Section 1502(a) (3) of title 5, United States Code (relating to influencing elections, taking part in political campaigns, prohibitions, exceptions), is amended to read as follows:

“(3) be a candidate for elective office.”.

(b) (1) Section 1503 of title 5, United States Code, relating to nonpartisan political activity, is amended to read as follows:

“§ 1503. Nonpartisan candidacies permitted

“Section 1502(a) (3) of this title does not prohibit any State or local officer or employee from being a candidate in any election if none of the candidates is to be nominated or elected at such election as representing a party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected.”.

(2) The table of sections for chapter 15 of title 5, United States Code, is amended by striking out the item relating to section 1503 and inserting in lieu thereof the following new item:

“1503. Nonpartisan candidacies permitted.”.

(c) Section 1501 of title 5, United States Code, relating to definitions, is amended—

(1) by striking out paragraph (5);

(2) in paragraph (3) thereof, by inserting “and” immediately after “Federal Reserve System;” and

(3) in paragraph (4) thereof, by striking out “; and” and inserting in lieu thereof a period.

CIVIL SERVICE RULE I
Effective February 1, 1939

POLITICS AND RELIGION

1. No interference with elections. - No person in the executive civil service shall use his official authority or influence for the purpose of interfering with an election or affecting the results thereof. Persons who by the provisions of these rules are in the competitive classified service, while retaining the right to vote as they please and to express their opinions on all political subjects, shall take no active part in political management or in political campaigns.

2. No disclosure or discriminations. - No question in any form of application or in any examination shall be so framed as to elicit information concerning the political or religious opinions or affiliations of any applicant, nor shall any inquiry be made concerning such opinions or affiliations, and all disclosures thereof shall be discountenanced, except as to such membership in political parties or organizations as constitutes by law a disqualification for Government employment. No discrimination shall be exercised, threatened, or promised by any person in the executive civil service against or in favor of any applicant, eligible, or employee in the classified service because of race, or his political or religious opinions or affiliations, except as may be authorized or required by law.

3. Recommendations not considered. - No recommendation of an applicant, eligible, or employee in the classified service involving disclosure of his political or religious opinions or affiliations shall be considered or filed by the Civil Service Commission, hereinafter called the Commission, or by any officer concerned in making appointments or promotions.

4. Attempting to secure withdrawals. - No applicant for competitive examination, or eligible on any civil service register, or officer or employee in the executive civil service, shall directly or indirectly persuade, induce, or coerce, or attempt to persuade, induce, or coerce any prospective applicant, applicant, or eligible to withhold filing application or to withdraw from competition or eligibility for positions in the competitive classified civil service, for the purpose of either improving or injuring the prospects or chances of any such applicant or eligible. The penalty for violation of this section by applicants or eligibles shall be cancellation of application or eligibility, as the case may be, and such other penalty as the Civil Service Commission may deem appropriate. The penalty for violation of this rule on the part of officers or employees in the executive civil service shall be such disciplinary action as the Commission shall direct.

CIVIL SERVICE RULE IV

5 C.F.R. § 4

§ 4.1 Prohibition against political activity.

No person employed in the executive branch of the Federal Government, or any agency or department thereof, shall use his official authority or influence for the purpose of interfering with an election or affecting the result thereof. No persons occupying a position in the competitive service shall take any active part in political management or in political campaigns, except as may be provided by or pursuant to statute. All such persons shall retain the right to vote as they may choose and to express their opinions on all political subjects and candidates.

§ 4.2 Prohibition against racial, political or religious discrimination.

No person employed in the executive branch of the Federal Government who has authority to take or recommend any personnel action with respect to any person who is an employee in the competitive service or any eligible or applicant for a position in the competitive service shall make any inquiry concerning the race, political affiliation, or religious beliefs of any such employee, eligible, or applicant. All disclosures concerning such matters shall be ignored, except as to such membership in political parties or organizations as constitutes by law a disqualification for Government employment. No discrimination shall be exercised, threatened, or promised by any person in the executive branch of the Federal Government against or in favor of any employee in the competitive service, or any eligible or applicant for a position in the competitive service because of his race, political affiliation, or religious beliefs, except as may be authorized or required by law.

§ 4.3 Prohibition against securing withdrawal from competition.

No person shall influence another person to withdraw from competition for any position in the competitive service for the purpose of either improving or injuring the prospects of any applicant for appointment. The commission is authorized to take such disciplinary action as it deems appropriate whenever it finds that any person has violated this section.

IN THE SENATE OF THE UNITED STATES

JANUARY 23, 1975

Mr. McGEE (for himself and Mr. BURDICK) introduced the following bill:
which was read twice and referred to the Committee on Post Office and
Civil Service

A BILL

To restore to Federal civilian employees their rights to participate, as private citizens, in the political life of the Nation, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Federal Employees'
4 Political Activities Act of 1975".

5 SEC. 2. Section 7324 of title 5, United States Code, is
6 amended to read as follows:

7 "§ 7324. Use of official authority or influence to affect
8 elections prohibited; other political activities
9 permitted.

10 "(a) An employee in an executive agency, an inde-

II

1 pendent agency of the United States Government, United
2 States Postal Service, or an individual employed by the
3 Government of the District of Columbia may not use his
4 official authority or influence or the facilities, materials, or
5 personnel of any such agency or government for the purpose
6 of interfering with or affecting the result of any election or
7 any process defined in subsection (c) of this section.

8 “(b) An employee or individual to whom subsection
9 (a) of this section applies retains the right to vote as he
10 chooses, to express his opinion on political subjects and candi-
11 dates, and to take an active part in political management
12 or in political campaigns in his role as a private citizen

13 “(c) For the purpose of this section, the phrase ‘to
14 express his opinion on political subjects and candidates, and
15 to take an active part in political management or in political
16 campaigns’ shall mean any partisan or nonpartisan political
17 activity including but not limited to: (1) candidacy for or
18 service as delegate, alternate, or proxy in any convention
19 or service as an officer or employee thereof; (2) participa-
20 tion in the deliberations of any primary meeting, mass con-
21 vention or caucus, addressing the meeting, making motions,
22 preparing or assisting in preparing resolutions before the
23 meeting, or taking a prominent part therein; (3) prepar-
24 ing for, or organizing or conducting a meeting or rally,
25 addressing such a meeting or taking any part therein; (4)

1 membership in clubs, organizing of clubs, or serving as an
2 officer therein; (5) distributing literature and distributing
3 or wearing badges: *Provided*, That such literature and
4 badges will not be worn, displayed or distributed by any
5 employee or individual to whom subsection (a) applies who,
6 in the normal course of his employment meets with the
7 general public: *And provided further*, That such literature
8 and badges will not be worn, displayed, or distributed by
9 such employee or individual in any federally owned and
10 operated facility or portion of federally owned or operated
11 facility which is normally accessible to the general public;
12 (6) publishing or having editorial or managerial connection
13 with any newspaper, and writing for publication or publish-
14 ing any letter or article, signed or unsigned, soliciting votes
15 in favor of or against any party, candidate, or faction; (7)
16 organizing or participating in any parade; (8) initiating or
17 signing nominating petitions on behalf of a candidate, in-
18 cluding canvassing for signatures of others. *Provided*, That
19 such activity will not be conducted by any employee or
20 individual to whom subsection (a) applies during working
21 hours or while in uniform or while otherwise exercising his
22 official duties; (9) candidacy for nomination or election to
23 any National, State, county, or municipal office: *Provided*,
24 That such activity will not unduly infringe upon the exercise
25 of the official duties of an employee or individual to whom

1 subsection (a) of this section applies: *And further provided,*
 2 That such employee or individual who is elected or appointed
 3 to a full time, full salaried, National, State, county, or munic-
 4 ipal office shall take a continuous leave of absence, without
 5 pay, during his term in such office.

6 SEC. 3. Sections 7326 and 7327 of title 5, United States
 7 Code, are repealed.

8 SEC. 4. Section 7323 of title 5, United States Code, is
 9 amended to read as follows:

10 **"§ 7323. Political contributions prohibited; enforcement**
 11 **by Civil Service Commission.**

12 "(a) (1) An employee or individual to whom subsec-
 13 tion (a) of section 2 applies, an employee appointed by the
 14 President, a Member of Congress, an employee of Congress,
 15 or an officer of the uniformed services may not request,
 16 invite, receive from or give to an employee or individual to
 17 whom subsection (a) of section 2 applies, an employee
 18 appointed by the President, a Member of Congress, an
 19 employee of Congress, or an officer of the uniformed services
 20 any money or other valuable political thing on account of
 21 or to be applied to a political object, except: *Provided,*
 22 That any individual herein described may freely and vol-
 23 untarily make a contribution of money, services, or materials
 24 to any candidate for public office or to support or further
 25 those activities described in subsection (b) of section 2.

1 “(2) An individual described in (a) (1) of this section
2 who violates this section shall be subject to the penalties
3 provided in section 7325 of this title.

4 “(b) The Civil Service Commission shall process com-
5 plaints arising under subsection (a) of this section and
6 shall, upon receipt of a complaint alleging facts which con-
7 stitute a violation of subsection (a), investigate the alleged
8 activity.

9 “(c) Upon a finding that a violation of subsection
10 (a) of this section has occurred, the Civil Service Com-
11 mission shall—

12 “(1) in the case of an employee or individual in the
13 competitive service, impose the appropriate penalty
14 under section 7325;

15 “(2) in the case of others described in section (a)
16 of this section notify the President, the head of the
17 agency in which the employee is employed, and the
18 Congress (A) that a violation of subsection (a) of this
19 section has occurred, and (B) what penalty the Com-
20 mission has determined is appropriate under section
21 7325 of this title; and

22 “(3) refer the case to the attention of the Attorney
23 General for prosecution under section 602 of title 18.”.

24 SEC. 5. Section 7325 of title 5, United States Code, is
25 amended to read as follows: “Whenever the Civil Service

1 Commission finds that an employee or individual has vio-
2 lated section 7323 or 7324 of this title, the Commission shall
3 impose such penalty as it finds is warranted but not less than
4 thirty days' suspension from his position without pay: *Pro-*
5 *vided*, That he shall only be removed upon the unanimous
6 vote of the Commission. Funds appropriated for the position
7 from which an employee or individual is removed may not
8 thereafter be used to pay the employee or individual.”.

9 SEC. 6. Section 602 of title 18, United States Code,
10 is amended by inserting “(a)” before the word “Whoever”
11 and by adding at the end thereof the following new sub-
12 section:

13 “(b) Upon receipt of a finding of illegal activity by
14 the Civil Service Commission under section 7323 of title 5,
15 the Attorney General shall prosecute under subsection (a)
16 of this section, unless he shall determine that no factual basis
17 for prosecution exists or that the cause of justice will not
18 be served by such prosecution. If the Attorney General
19 determines not to prosecute in a case referred to him by the
20 Commission, he shall send to Congress within sixty days a
21 written report describing the nature of the alleged violation
22 and the reasons for not proceeding with prosecution under
23 subsection (a) of this section.”.

H.R. 3000, Federal Employees' Political Activities Act of 1975

H.R. 3000 would enable Federal civilian and postal employees to participate more actively in the democratic political process. It authorizes voluntary political contributions by employees. It permits employees to express their views and to participate in political management of campaigns without the involvement of their political authority or influence. It defines the meaning of political management and campaigns to include the following activities:

- * Candidacy for service in political conventions;
- * Participation in political meetings, caucuses and primaries;
- * Preparing for, organizing or conducting a political meeting or rally;
- * Membership in political clubs;
- * Distributing campaign literature and distributing or wearing campaign badges and buttons;
- * Having a publishing, editorial or managerial connection with political publications;
- * Participating in a political parade;
- * Circulating nominating petitions; and
- * Candidacy for any public office.

H. R. 3000

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 6, 1975

MR. CLAY introduced the following bill; which was referred to the Committee on Post Office and Civil Service

A BILL

To restore to Federal civilian employees their rights to participate, as private citizens, in the political life of the Nation, to protect Federal civilian employees from improper political solicitations, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Federal Employees'
4 Political Activities Act of 1975".

5 SEC. 2. (a) Section 7323 of title 5, United States Code,
6 is amended to read as follows:

7 "§ 7323. Political contributions prohibited; enforcement
8 by Civil Service Commission

9 "(a) An employee in an Executive agency, including

I

1 an employee appointed by the President, may not request
 2 or receive from, or give to, an employee, a Member of Con-
 3 gress, or an officer of a uniformed service a thing of value for
 4 political purposes, except that an employee may freely
 5 and voluntarily make a contribution to any candidate for
 6 public office on his own volition. An employee who violates
 7 this section shall be subject to the penalties provided in sec-
 8 tion 7325 of this title.

9 “(b) The Civil Service Commission shall process com-
 10 plaints arising under subsection (a) of this section and shall,
 11 upon receipt of a complaint alleging facts which constitute
 12 a violation of subsection (a), investigate the alleged activity.

13 “(c) Upon a finding that a violation of subsection (a)
 14 of this section has occurred, the Civil Service Commission
 15 shall—

16 “(1) in the case of an employee in the competitive
 17 service, impose the appropriate penalty under section
 18 7325;

19 “(2) in the case of an employee appointed by the
 20 President, notify the President, the head of the Execu-
 21 tive agency in which the employee is employed, and the
 22 Congress (A) that a violation of subsection (a) of this
 23 section has occurred, and (B) what penalty the Com-
 24 mission has determined is appropriate under section
 25 7325 of this title; and

1 “(3) refer the case to the attention of the Attorney
2 General for prosecution under section 602 of title 18.

3 “(d) For the purpose of this section ‘Executive agency’
4 includes the United States Postal Service.”.

5 (b) The table of sections of chapter 73 of title 5, United
6 States Code, is amended by striking out—

“7323. Political contributions; prohibition.”,

7 and inserting in place thereof—

“7323. Political contributions prohibited; enforcement by Civil Service
Commission.”.

8 SEC. 3. (a) Section 7324 of title 5, United States Code,
9 is amended to read as follows:

10 “§ 7324. Use of official authority or influence to affect
11 elections prohibited; other political activities
12 permitted

13 “(a) An employee in an Executive agency or an in-
14 dividual employed by the government of the District of
15 Columbia may not use his official authority or influence for
16 the purpose of interfering with or affecting the result of an
17 election.

18 “(b) An employee or individual to whom subsection
19 (a) of this section applies retains the right to vote as he
20 chooses, to express his opinion on political subjects and
21 candidates, and to take an active part in political manage-
22 ment or in political campaigns in his role as a private citizen
23 and without involving his official authority or influence.

1 “(c) For the purpose of this section, the phrase ‘an
2 active part in political management or in political campaigns’
3 includes—

4 “(1) candidacy for or service as delegate, alternate,
5 or proxy in any political convention or service as an
6 officer or employee thereof;

7 “(2) participation in the deliberations of any pri-
8 mary meeting, mass convention or caucus, addressing
9 the meeting, making motions, preparing or assisting in
10 preparing resolutions before the meeting, or taking a
11 prominent part therein;

12 “(3) preparing for, or organizing or conducting a
13 political meeting or rally, addressing such a meeting on
14 any partisan political matter, or taking any part therein;

15 “(4) membership in political clubs and organizing
16 of such a club;

17 “(5) distributing campaign literature and distribut-
18 ing or wearing campaign badges and buttons;

19 “(6) publishing or having editorial or managerial
20 connection with any newspaper including those gener-
21 ally known as partisan from a political standpoint, and
22 writing for publication or publishing any letter or arti-
23 cle, signed or unsigned, soliciting votes in favor of or
24 against any political party, candidate, or faction, except
25 that no such editorial, letter, or article shall make refer-

1 ence to the writer's official employment or authority;

2 “(7) organizing or participating in any political
3 parade;

4 “(8) initiating or signing nominating petitions on
5 behalf of a partisan candidate, including canvassing for
6 signatures of others; and

7 “(9) candidacy for nomination or election to any
8 National, State, county, or municipal office.”

9 “(d) For the purpose of this section ‘Executive agency’
10 includes the United States Postal Service.”.

11 (b) The table of sections of chapter 73 of title 5, United
12 States Code, is amended by striking out—

“7324. Influencing elections; taking part in political campaigns; prohibi-
tions; exceptions.”,

13 and inserting in place thereof—

“7324. Use of official authority or influence to affect elections prohibited;
other political activities permitted.”.

14 SEC. 4. Section 7325 of title 5, United States Code, is
15 amended to read as follows:

16 **“§ 7325. Penalties**

17 “Whenever the Civil Service Commission finds that
18 an employee or individual has violated section 7323 or
19 7324 of this title, the Commission shall impose such penalty
20 as it finds is warranted but not less than 30 days’ suspension
21 from his position without pay. An employee or individual
22 shall be removed only upon the unanimous vote of the Com-

1 mission. Funds appropriated for the position from which
2 an employee or individual is removed may not thereafter
3 be used to pay the employee or individual.”

4 SEC. 5. Sections 7326 and 7327 of title 5, United
5 States Code, are repealed.

6 SEC. 6. Section 602 of title 18, United States Code, is
7 amended by adding at the end thereof the following new
8 paragraph:

9 “Upon receipt of a finding by the Civil Service Com-
10 mission of illegal activity under section 7323 of title 5, the
11 Attorney General shall prosecute under the first paragraph
12 of this section, unless he shall determine that no factual basis
13 for prosecution exists or that the cause of justice will not be
14 served by such prosecution. If the Attorney General deter-
15 mines not to prosecute in a case referred to him by the Com-
16 mission, he shall send to Congress within sixty days a
17 written report describing the nature of the alleged violation
18 and the reasons for not proceeding with prosecution under
19 the first paragraph of this section.”

SUMMARY OF H.R. 8617--"FEDERAL EMPLOYEES' POLITICAL ACTIVITIES ACT OF 1975"

AS INTRODUCED ON JULY 14, 1975

A bill to restore to federal civilian and Postal Service employees their rights to participate voluntarily, as private citizens, in the political processes of the Nation, to protect such employees from improper political solicitations, and for other purposes.

- * States that federal employees are encouraged to exercise their right of voluntary political participation.
- * Prohibits the use of official authority, influence, or coercion with the right to vote, not to vote or to otherwise engage in political activity.
- * Prohibits use of funds to influence votes; solicitation of political contributions by superior officials; and making political contributions in government rooms or buildings.
- * Prohibits political activity while on duty, in federal buildings, or in uniform.
- * Provides leave for candidates for elective office.
- * Establishes an independent Board on Political Activities of Government Personnel whose function is to hear and adjudicate alleged violations of law.
- * Authorizes the Civil Service Commission to investigate alleged violations of law and provides for subpoena authority, due process, and judicial review of adverse decisions.
- * Subjects violators of law to removal, suspension or lesser penalties at the discretion of the Board.
- * Requires that the Civil Service Commission conduct a program for informing federal employees of their rights of political participation and report annually to the Congress on its implementation.

94TH CONGRESS
1ST SESSION

H. R. 8617

IN THE HOUSE OF REPRESENTATIVES

JULY 14, 1975

Mr. CLAY (for himself, Mrs. SPELLMAN, Mr. SOLARZ, Mr. CHARLES H. WILSON of California, Mr. HARRIS, and Mrs. SCHROEDER) introduced the following bill; which was referred to the Committee on Post Office and Civil Service

A BILL

To restore to Federal civilian and Postal Service employees their rights to participate voluntarily, as private citizens, in the political processes of the Nation, to protect such employees from improper political solicitations, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Federal Employees'
4 Political Activities Act of 1975".

5 SEC. 2. (a) Subchapter III of chapter 73 of title 5,
6 United States Code, is amended to read as follows:

I

1 “SUBCHAPTER III—POLITICAL ACTIVITIES

2 “§ 7321. Political participation

3 “It is the policy of the Congress that employees should
4 be encouraged to fully exercise, to the extent not expressly
5 prohibited by law, their rights of voluntary participation in
6 the political processes of our Nation.

7 “§ 7322. Definitions

8 “For the purpose of this subchapter—

9 “(1) ‘employee’ means any individual, including
10 the President and the Vice President, employed or
11 holding office in—

12 “(A) an Executive agency,

13 “(B) the government of the District of
14 Columbia,

15 “(C) the competitive service, or

16 “(D) the United States Postal Service or the
17 Postal Rate Commission;

18 but does not include a member of the uniformed services;

19 “(2) ‘candidate’ means any individual who seeks
20 nomination for election, or election, to any elective office,
21 whether or not such individual is elected, and, for the
22 purpose of this paragraph, an individual shall be deemed
23 to seek nomination for election, or election, to an elective
24 office, if such individual has—

25 “(A) taken the action required to qualify for
26 nomination for election, or election, or

1 “(B) received political contributions or made
2 expenditures, or has given consent for any other
3 person to receive political contributions or make ex-
4 penditures, with a view to bringing about such indi-
5 vidual’s nomination for election, or election, to such
6 office;

7 “(3) ‘political contribution’—

8 “(A) means a gift, subscription, loan, advance,
9 or deposit of money or anything of value, made for
10 the purpose of influencing the nomination for elec-
11 tion, or election, of any individual to elective office
12 or for the purpose of otherwise influencing the re-
13 sults of any election;

14 “(B) includes a contract, promise, or agree-
15 ment, express or implied, whether or not legally
16 enforceable, to make a political contribution for any
17 such purpose; and

18 “(C) includes the payment by any person,
19 other than a candidate or a political organization,
20 of compensation for the personal services of another
21 person which are rendered to such candidate or po-
22 litical organization without charge for any such
23 purpose;

24 “(4) ‘superior’ means an employee (other than the
25 President or the Vice President) who exercises super-

1 vision of, or control or administrative direction over,
2 another employee;

3 “(5) ‘elective office’ means any elective public
4 office and any elective office of any political party or
5 affiliated organization; and

6 “(6) ‘Board’ means the Board on Political Activi-
7 ties of Federal Employees established under section 7327
8 of this title.

9 **“§ 7323. Use of official authority or influence; prohibition**

10 “(a) An employee may not directly or indirectly use or
11 attempt to use the official authority or influence of such em-
12 ployee for the purpose of—

13 “(1) interfering with or affecting the result of any
14 election; or

15 “(2) intimidating, threatening, coercing, command-
16 ing, influencing, or attempting to intimidate, threaten,
17 coerce, command, or influence—

18 “(A) any individual for the purpose of inter-
19 fering with the right of any individual to vote as
20 such individual may choose, or of causing any indi-
21 vidual to vote, or not to vote, for any candidate or
22 measure;

23 “(B) any person to give or withhold any politi-
24 cal contribution; or

1 “(C) any person to engage, or not to engage,
2 in any form of political activity whether or not such
3 activity is prohibited by law.

4 “(b) For purposes of subsection (a) of this section, ‘use
5 of official authority or influence’ includes, but is not limited
6 to, promising to confer or conferring any benefit (such
7 as appointment, promotion, compensation, grant, contract,
8 license, or ruling), or effecting or threatening to effect any
9 reprisal (such as deprivation of appointment, promotion,
10 compensation, grant, contract, license, or ruling).

11 “§ 7324. Solicitation; prohibition

12 “An employee may not—

13 “(1) give or offer to give a political contribution
14 to any individual either to vote or refrain from voting,
15 or to vote for or against any candidate or measure, in
16 any election;

17 “(2) solicit, accept, or receive a political contribu-
18 tion to vote or refrain from voting, or to vote for or
19 against any candidate or measure, in any election;

20 “(3) knowingly give or hand over a political con-
21 tribution to a superior of such employee; or

22 “(4) knowingly solicit, accept, or receive, or be in
23 any manner concerned with soliciting, accepting, or
24 receiving, a political contribution—

25 “(A) from another employee (or a member

1 of another employee's immediate family) with re-
 2 spect to whom such employee is a superior; or

3 “(B) in any room or building occupied in the
 4 discharge of official duties by—

5 “(i) an individual employed or holding
 6 office in the Government of the United States, in
 7 the government of the District of Columbia,
 8 or in any agency or instrumentality of the
 9 foregoing; or

10 “(ii) an individual receiving any salary or
 11 compensation for services from money derived
 12 from the Treasury of the United States.

13 **“§ 7325. Political activities on duty, etc.; prohibition**

14 “An employee may not engage in political activity—

15 “(1) while such employee is on duty,

16 “(2) in any room or building occupied in the dis-
 17 charge of official duties by an individual employed or
 18 holding office in the Government of the United States,
 19 in the government of the District of Columbia, or in
 20 any agency or instrumentality of the foregoing, or

21 “(3) while wearing a uniform or official insignia
 22 identifying the office or position of such employee.

23 **“§ 7326. Leave for candidates for elective office**

24 “(a) An employee who is a candidate for elective
 25 office shall, upon the request of such employee, be granted

1 leave without pay for the purpose of allowing such employee
2 to engage in activities relating to such candidacy.

3 “(b) Notwithstanding section 6302 (d) of this title,
4 an employee who is a candidate for elective office shall, upon
5 the request of such employee, be granted accrued annual
6 leave. Such leave shall be in addition to leave without pay
7 to which such employee may be entitled under subsection
8 (a) of this section.

9 **“§ 7327. Board on Political Activities of Federal Employees**

10 “(a) There is established a board to be known as the
11 Board on Political Activities of Federal Employees. It shall
12 be the function of the Board to hear and decide cases regard-
13 ing violations of section 7323, 8324, and 7325 of this title.

14 “(b) The Board shall be composed of 3 members—

15 “(1) one member of which shall be appointed, with
16 the confirmation of a majority of both Houses of the
17 Congress, by the President and who shall serve as Chair-
18 man of the Board;

19 “(2) one member of which shall be appointed, with
20 the confirmation of a majority of both Houses of the
21 Congress, by the Speaker of the House of Representa-
22 tives, after consultation with the majority leader of the
23 House and the minority leader of the House; and

24 “(3) one member of which shall be appointed, with
25 the confirmation of a majority of both House of the

1 Congress, by the President pro tempore of the Senate,
 2 after consultation with the majority leader of the Senate
 3 and the minority leader of the Senate.

4 “(c) Members of the Board shall be chosen on the basis
 5 of their professional qualifications from among individuals
 6 who, at the time of their appointment, are employees (as
 7 defined under section 7322 (1) of this title).

8 “(d) (1) Members of the Board shall serve a term of
 9 3 years, except that of the members first appointed—

10 “(A) the Chairman shall be appointed for a term
 11 of 3 years,

12 “(B) the member appointed under subsection (b)
 13 (2) of this section shall be appointed for a term of 2
 14 years, and

15 “(C) the member appointed under subsection (b)
 16 (3) of this section shall be appointed for a term of 1
 17 year.

18 An individual appointed to fill a vacancy occurring other
 19 than by the expiration of a term of office shall be appointed
 20 only for the unexpired term of the member such individual
 21 will succeed. Any vacancy occurring in the membership of
 22 the Board shall be filled in the same manner as in the case
 23 of the original appointment.

24 “(2) If an employee who was appointed as a member
 25 of the Board is separated from service as an employee he

1 may not continue as a member of the Board after the 60-
2 day period beginning on the date so separated.

3 “(e) The Board shall meet at the call of the Chairman.

4 “(f) All decisions of the Board with respect to the
5 exercise of its duties and powers under the provisions of this
6 subchapter shall be made by a majority vote of the Board.

7 “(g) A member of the Board may not delegate to any
8 person his vote nor, except as expressly provided by this
9 subchapter, may any decisionmaking authority vested in the
10 Board by the provisions of this subchapter be delegated to
11 any member or person.

12 “(h) The Board shall prepare and publish in the Fed-
13 eral Register written rules for the conduct of its activities,
14 shall have an official seal which shall be judicially noticed,
15 and shall have its office in or near the District of Columbia
16 (but it may meet or exercise any of its powers anywhere
17 in the United States).

18 “(i) The Civil Service Commission shall provide such
19 clerical and professional personnel, and administrative sup-
20 port, as the Chairman of the Board considers appropriate
21 and necessary to carry out the Board's functions under this
22 subchapter. Such personnel shall be responsible to the Chair-
23 man of the Board.

24 “(j) The Administrator of the General Services Ad-
25 ministration shall furnish the Board suitable office space ap-

1 appropriately furnished and equipped, as determined by the
2 Administrator.

3 “(k) (1) Members of the Board shall receive no addi-
4 tional pay on account of their service on the Board.

5 “(2) Members shall be entitled to leave without loss of
6 or reduction in pay, leave, or performance or efficiency rating
7 during a period of absence while in the actual performance
8 of duties vested in the Board.

9 **“§ 7328. Investigation; procedures; hearing**

10 “(a) The Civil Service Commission shall investigate
11 reports and allegations of any activity prohibited by section
12 7323, 7324, or 7325 of this title.

13 “(b) As a part of the investigation of the activities of an
14 employee, the Commission shall provide such employee an
15 opportunity to make a statement concerning the matters
16 under investigation and to support such statement with any
17 documents the employee wishes to submit. An employee of
18 the Commission lawfully assigned to investigate a violation of
19 this subchapter may administer an oath to a witness attend-
20 ing to testify or depose in the course of the investigation.

21 “(c) (1) If it appears to the Commission after investi-
22 gation that a violation of section 7323, 7324, or 7325 of this
23 title has not occurred, it shall so notify the employee and the
24 agency in which the employee is employed.

1 “(2) Except as provided in paragraph (3) of this sub-
 2 section, if it appears to the Commission after investigation
 3 that a violation of section 7323, 7324, or 7325 of this title
 4 has occurred, the Commission shall submit to the Board and
 5 serve upon the employee a notice by certified mail, return
 6 receipt requested (or if notice cannot be served in such man-
 7 ner, then by any method calculated to reasonably apprise
 8 the employee) —

9 “(A) setting forth specifically and in detail the
 10 charges of alleged prohibited activity;

11 “(B) advising the employee of the penalties pro-
 12 vided under section 7329 of this title;

13 “(C) affording a period of not less than 30 days
 14 within which the employee may file with the Board a
 15 written answer to the charges in the manner prescribed
 16 by rules issued by the Board; and

17 “(D) advising the employee that unless the em-
 18 ployee answers the charges, in writing, within the time
 19 allowed therefor, the Board is authorized to treat such
 20 failure as an admission by the employee of the charges
 21 set forth in the notice and a waiver by the employee of
 22 the right to a hearing on the charges.

23 “(3) If it appears to the Commission after investiga-
 24 tion that a violation of section 7323, 7324, or 7325 of this
 25 title has been committed by—

1 “(A) the Vice President;

2 “(B) an employee appointed by the President by
3 and with the advice and consent of the Senate;

4 “(C) an employee whose appointment is expressly
5 required by statute to be made by the President;

6 “(D) the Mayor of the District of Columbia; or

7 “(E) the Chairman or a member of the Council of
8 the District of Columbia, as established by the District of
9 Columbia Self-Government and Governmental Reor-
10 ganization Act;

11 the Commission shall refer the case to the Attorney General
12 for prosecution under title 18, and shall report the nature and
13 details of the violation to the President and to the Con-
14 gress.

15 “(d) (1) If a written answer is not duly filed within
16 the time allowed therefor, the Board may, without further
17 proceedings, issue its final decision and order.

18 “(2) If an answer is duly filed, the charges shall be
19 determined by the Board on the record after a hearing
20 conducted by a hearing examiner appointed under section
21 3105 of this title, and, except as otherwise expressly pro-
22 vided under this subchapter, in accordance with the require-
23 ments of subchapter II of chapter 5 of this title, notwith-
24 standing any exception therein for matters involving the
25 tenure of an employee. The hearing shall be commenced

1 within 30 days after the answer is filed with the Board
2 and shall be conducted without unreasonable delay. As soon
3 as practicable after the conclusion of the hearing, the exam-
4 iner shall serve upon the Board, the Commission, and the
5 employee such examiner's recommended decision with notice
6 to the Commission and the employee of opportunity to file
7 with the Board, within 30 days after the date of such notice,
8 exceptions to the recommended decision. The Board shall
9 issue its final decision and order in the proceeding no later
10 than 60 days after the date the recommended decision is
11 served. The employee shall not be removed from active duty
12 status by reason of the alleged violation of this subchapter
13 at any time before the effective date specified by the Board
14 in its final order.

15 “(e) (1) At any stage of a proceeding or investigation
16 under this subchapter, the Board may, at the written request
17 of the Commission or the employee, require by subpoena the
18 attendance and testimony of witnesses and the production
19 of documentary or other evidence relating to the proceeding
20 or investigation at any designated place, from any place in
21 the United States or any territory or possession thereof, the
22 Commonwealth of Puerto Rico, or the District of Columbia.
23 Any member of the Board may issue subpoenas and members
24 of the Board and any hearing examiner authorized by the
25 Board may administer oaths, examine witnesses, and receive

1 evidence. In the case of contumacy or failure to obey a sub-
2 pena, the United States district court for the judicial district
3 in which the person to whom the subpoena is addressed
4 resides or is served may, upon application by the Board,
5 issue an order requiring such person to appear at any desig-
6 nated place to testify or to produce documentary or other
7 evidence. Any failure to obey the order of the court may be
8 punished by the court as a contempt thereof.

9 “(2) The Board (or a member designated by the
10 Board) may order the taking of depositions at any stage of
11 a proceeding or investigation under this subchapter. Deposi-
12 tions shall be taken before an individual designated by the
13 Board and having the power to administer oaths. Testimony
14 shall be reduced to writing by or under the direction of the
15 individual taking the deposition and shall be subscribed by
16 the deponent.

17 “(3) An employee may not be excused from attending
18 and testifying or from producing documentary or other evi-
19 dence in obedience to a subpoena of the Board on the ground
20 that the testimony or evidence required of the employee
21 may tend to incriminate the employee or subject the em-
22 ployee to a penalty or forfeiture for or on account of any
23 transaction, matter, or thing concerning which the employee
24 is compelled to testify or produce evidence. No employee
25 shall be prosecuted or subjected to any penalty or forfeiture

1 for or on account of any transaction, matter, or thing con-
2 cerning which the employee is compelled, after having
3 claimed the privilege against self-incrimination, to testify
4 or produce evidence, nor shall testimony or evidence so com-
5 pelled be used as evidence in any criminal proceeding against
6 the employee in any court, except that no employee shall
7 be exempt from prosecution and punishment for perjury
8 committed in so testifying.

9 “(f) An employee upon whom a penalty is imposed
10 by an order of the Board under subsection (d) of this section
11 may, within 30 days after the date on which the order was
12 issued, institute an action for judicial review of the Board’s
13 order in the United States District Court for the District of
14 Columbia or in the United States district court for the judicial
15 district in which the employee resides or is employed. The
16 institution of an action for judicial review shall not operate
17 as a stay of the Board’s order, unless the court specifically
18 orders such stay. A copy of the summons and complaint
19 shall be served as otherwise prescribed by law and, in
20 addition, upon the Board. Thereupon the Board shall certify
21 and file with the court the record upon which the Board’s
22 order was based. If application is made to the court for
23 leave to adduce additional evidence, and it is shown to the
24 satisfaction of the court that the additional evidence may
25 materially affect the result of the proceeding and that there

1 were reasonable grounds for failure to adduce the evidence
2 at the hearing conducted under subsection (d) (2) of this
3 section, the court may direct that the additional evidence be
4 taken before the Board in the manner and on the terms and
5 conditions fixed by the court. The Board may modify its
6 findings of fact or order, in the light of the additional evi-
7 dence, and shall file with the court such modified findings or
8 order. The Board's findings of fact, if supported by substan-
9 tial evidence, shall be conclusive. The court shall affirm the
10 Board's order if it determines that it is in accordance with
11 law. If the court determines that the order is not in ac-
12 cordance with law—

13 “(1) it shall remand the proceeding to the Board
14 with directions either to enter an order determined by
15 the court to be lawful or to take such further proceedings
16 as, in the opinion of the court, are required; and

17 “(2) it may assess against the United States rea-
18 sonable attorney fees and other litigation costs reason-
19 ably incurred by the employee.

20 “(g) The Commission or the Board, in its discretion,
21 may proceed with any investigation or proceeding instituted
22 under this subchapter notwithstanding that the Commission
23 or the head of an employing agency or department has re-
24 ported the alleged violation to the Attorney General as re-
25 quired by section 535 of title 28.

1 **“§ 7329. Penalties**

2 “(a) Subject to and in accordance with section 7328
3 of this title, an employee who is found to have violated
4 any provision of section 7323, 7324, or 7325 of this title
5 shall, upon a final order of the Board, be—

6 “(1) removed from such employee’s position, in
7 which event that employee may not thereafter hold any
8 position (other than an elected position) as an em-
9 ployee (as defined in section 7322 (1) of this title) for
10 such period as the Board may prescribe:

11 “(2) suspended without pay from such employee’s
12 position for such period as the Board may prescribe; or

13 “(3) disciplined in such other manner as the Board
14 shall deem appropriate.

15 “(b) The Board shall notify the Commission, the em-
16 ployee, and the employing agency of any penalty it has
17 imposed under this section. The employing agency shall cer-
18 tify to the Board the measures undertaken to implement the
19 penalty.

20 **“§ 7330. Education program; reports**

21 “(a) The Commission shall establish and conduct a
22 continuing program to inform all employees of their rights
23 of political participation and to educate employees with
24 respect to those political activities which are prohibited,

1 “(b) On or before March 30 of each calendar year, the
2 Commission shall submit a report covering the preceding
3 calendar year to the Speaker of the House of Representa-
4 tives and the President pro tempore of the Senate for referral
5 to the appropriate committees of the Congress. The report
6 shall include—

7 “(1) the number of investigations conducted under
8 section 7328 of this title and the results of such investi-
9 gations;

10 “(2) the name and position or title of each indivi-
11 dual involved, and the funds expended by the Commis-
12 sion, in carrying out the program required under subsec-
13 tion (a) of this section; and

14 “(3) an evaluation which describes—

15 “(A) the manner in which such program is
16 being carried out; and

17 “(B) the effectiveness of such program in
18 carrying out the purposes set forth in subsection
19 (a) of this section.

20 **“§ 7331. Regulations**

21 “The Civil Service Commission shall prescribe such
22 rules and regulations as may be necessary to carry out its
23 responsibilities under this subchapter.”.

24 (b) (1) Sections 8332 (k) (1), 8706 (e), and 8906
25 (e) (2) of title 5, United States Code, are each amended
26 by inserting immediately after “who enters on” the follow-

ing: "leave without pay granted under section 7326 (a) of this title, or who enters on".

(2) Section 3302 of title 5, United States Code, is amended by striking out "7153, 7321, and 7322" and inserting in lieu thereof "and 7153".

(3) Section 1308 (a) of title 5, United States Code, is amended—

(A) by inserting "and" at the end of paragraph (2) ;

(B) by striking out paragraph (3) ; and

(C) by redesignating paragraph (4) as paragraph (3) .

(4) The second sentence of section 8332 (k) (1) of title 5, United States Code, is amended by striking out "second" and inserting "last" in lieu thereof.

(5) The section analysis for subchapter III of chapter 73 of title 5, United States Code, is amended to read as follows:

"SUBCHAPTER III—POLITICAL ACTIVITIES

"Sec.

"7321. Political participation.

"7322. Definitions.

"7323. Use of official authority or influence; prohibition.

"7324. Solicitation; prohibition.

"7325. Political activities on duty, etc.; prohibition.

"7326. Leave for candidates for elective office.

"7327. Board on Political Activities of Federal Employees.

"7328. Investigation; procedures; hearing.

"7329. Penalties.

"7330. Education program; reports.

"7331. Regulations."

1 (c) Sections 602 and 607 of title 18, United States
2 Code, relating to solicitations and making of political con-
3 tributions, are each amended by adding at the end thereof the
4 following new sentence: "This section does not apply to any
5 activity of an employee as defined in section 7322 (1) of
6 title 5 unless such activity is prohibited by section 7324 of
7 that title."

8 (d) Section 6 of the Voting Rights Act of 1965 (42
9 U.S.C. 1973d) is amended by striking out "the provisions of
10 section 9 of the Act of August 2, 1939, as amended (5
11 U.S.C. 118i), prohibiting partisan political activity" and by
12 inserting in lieu thereof "the provisions of subchapter III
13 of chapter 73 of title 5, United States Code, relating to
14 political activities".

15 (e) Sections 103 (a) (4) (D) and 203 (a) (4) (D) of
16 the District of Columbia Public Education Act are each
17 amended by striking out "sections 7324 through 7327 of
18 title 5" and inserting in lieu thereof "section 7325 of title 5".

19 (f) The amendments made by this section shall take
20 effect on the ninetieth day after the date of the enactment
21 of this Act.

FEDERAL EMPLOYEES' POLITICAL ACTIVITIES ACT OF 1975

AUGUST 1, 1975.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

MR. CLAY, from the Committee on Post Office and Civil Service,
submitted the following

REPORT

together with

MINORITY, ADDITIONAL, AND SEPARATE VIEWS

[To accompany H.R. 8617]

The Committee on Post Office and Civil Service, to whom was referred the bill (H.R. 8617) to restore to Federal civilian and Postal Service employees their rights to participate voluntarily, as private citizens, in the political processes of the Nation, to protect such employees from improper political solicitations, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

AMENDMENTS

The amendments are as follows:

Page 4, line 22, after "measure" insert "in any election".

Page 5, line 4, strike out "purposes" and insert "the purpose".

Page 6, line 14, insert "(a)" before "An".

Page 6, immediately after line 22, insert the following:

"(b) The provisions of subsection (a) of this section shall not apply to—

"(1) the President and the Vice President; or

"(2) an individual—

"(A) paid from the appropriation for the White House Office,

"(B) paid from funds to enable the Vice President to provide assistance to the President, or

"(C) on special assignment to the White House Office, unless such individual holds a career or career-conditional appointment in the competitive service.

Page 7, line 6, before the period insert "for the purpose of allowing such employee to engage in activities relating to such candidacy".

Page 7, line 13, strike out "section" and insert "sections".

Page 7, line 13, strike out "8324" and insert "7324";

Page 7, line 25, strike out "House" and insert "Houses".

Page 11, line 13, strike out "affording" and insert "specifying".

Page 17, line 20, strike out "Education" and insert "Educational".

Page 17, line 24, immediately after the period, insert the following: "The Commission shall inform each employee individually in writing, at least once each calendar year, of such employee's political rights and of the restrictions under this subchapter. The Commission may determine, for each State, the most appropriate date for providing information required by this subsection. Such information, however, shall be provided to employees employed or holding office in any State not later than 60 days before the earliest primary or general election for State or Federal elective office held in such State."

Page 19, in the item relating to section 7330 in the analysis, strike out "Education" and insert "Educational".

Page 20, line 5, after "employee" insert a comma.

Page 20, line 6, after "title 5" insert a comma.

EXPLANATION OF AMENDMENTS

The amendment to page 4, line 22, is a technical amendment to conform the language of section 7323(a)(2)(A) to that in section 7324(2).

The amendment to page 5, line 4, is a technical amendment which corrects a typographical error in section 7323(b).

The amendment to page 6, line 14, is a technical amendment made necessary by the committee amendment to section 7325 which added a new subsection (b).

The amendment to page 6, immediately after line 22, inserts a new section 7325(b). The new subsection (b) excludes individuals occupying those positions stated in the amendment, from the prohibitions contained in section 7325 pertaining to engaging in political activity while on duty, in a Government room or building, or while wearing a uniform or official insignia.

The amendment to page 7, line 6, is a technical amendment which conforms the language of section 7326(b) to that in section 7326(a).

The amendments to page 7, lines 13 and 25, are technical amendments which correct typographical errors in the introduced bill.

The amendment to page 11, line 13, and page 17, line 20, are technical amendments which correct the wording of section 7328(c)(2)(C) and the section heading for section 7330.

The amendment to page 17, line 24, adds three new sentences at the end of section 7330(a) to require the Civil Service Commission to annually inform each employee, individually in writing, of each employee's political rights and the restrictions under subchapter III of chapter 73 of title 5, as amended by the bill.

The amendment to page 19, in the item relating to section 7330 in the analysis, is a technical amendment to conform the analysis to the heading of section 7330, as amended.

The amendments to page 20, lines 5 and 6, are technical amendments which add two commas to section 2(c) of the bill.

PURPOSE

The primary purposes of H.R. 8617 are:

(1) to modify the "Hatch Act" by permitting Federal civilian and postal employees to participate voluntarily and as private citizens in the political life of the Nation;

(2) to prohibit the misuse of authority, coercion and certain activities involving political contributions by Federal civilian and postal employees;

(3) to establish an independent Board on Political Activities of Federal Employees to adjudicate alleged violations of the law; and

(4) to establish a strong mechanism through which the law may be administered.

COMMITTEE ACTION

H.R. 3000, the Federal Employees' Political Activities Act of 1975, was introduced by Mr. Clay on February 6, 1975. Subsequently, 10 identical bills were introduced with the cosponsorship of 64 Members of the House. The bill was referred to the Subcommittee on Employee Political Rights and Intergovernmental Programs which conducted public hearings in Washington, D.C., on March 25, and April 8, 9, and 10, 1975. In addition, field hearings were conducted in Annandale, Va., on April 14; Riverdale, Md., on April 15; St. Louis, Mo., on April 19; Cleveland, Ohio, on April 21; New York, N.Y., on May 2 and 3; and Los Angeles, Calif., on June 13, 1975 (hearing Nos. 94-17 and 94-18).

Testimony was received from the Civil Service Commission, Members of Congress, public employee organizations, the National Association for the Advancement of Colored People, public interest groups, partisan and nonpartisan civic organizations, and active and former Federal employees.

On July 10, 1975, the Subcommittee on Employee Political Rights and Intergovernmental Programs approved, by unanimous voice vote, a clean bill in lieu of H.R. 3000, which was subsequently introduced as H.R. 8617. On July 24, 1975, the Committee on Post Office and Civil Service, by unanimous voice vote, ordered H.R. 8617, with amendments, reported to the House.

SUMMARY OF PROVISIONS

H.R. 8617, as reported by the full committee, includes the following provisions:

States that Federal employees are encouraged to exercise their right of voluntary political participation.

Prohibits the use of official authority, influence, or coercion with respect to the right to vote, not to vote, or to otherwise engage in political activity.

Prohibits use of funds to influence votes; solicitation of political contributions by superior officials; and making political contributions in Government rooms or buildings.

Prohibits political activity while on duty, in Federal buildings, or in uniform.

Authorizes leave for candidates for elective office.

Establishes an independent Board on Political Activities of Government Personnel whose function is to hear and adjudicate alleged violations of law.

Authorizes the Civil Service Commission to investigate alleged violations of law and provides for subpoena authority, due process, and judicial review of adverse decisions.

Subjects violators of law to removal, suspension or lesser penalties at the discretion of the Board.

Requires that the Civil Service Commission conduct a program for informing Federal employees of their rights of political participation and report annually to the Congress on its implementation.

STATEMENT

The Hatch Act was enacted in an effort to protect Federal employees from improper involvement in partisan political activities. Previous studies, public hearings, and staff surveys reveal no evidence that voluntary political activity in any way erodes the integrity of the merit system nor operates against the public interest.

Existing law which actually incorporates over 3,000 administrative determinations, is vague, overly broad, and infringes upon the right of every American to participate fully and completely in the political life of this Nation. Some quarters suggest that since Federal employees retain the right to vote, they enjoy adequate participation in the political process. This conclusion could not be endorsed by the committee.

H.R. 8617 takes these facts into consideration. It prohibits those involuntary political activities which tend to erode public confidence in the integrity of the merit system. It establishes an independent Board to adjudicate alleged violations, freeing the Commission to focus its efforts upon its investigatory and educational responsibilities. It provides due process and judicial review for Federal employees.

The bill does not effect existing law relating to the political activities of State and local government employees. Section 401 of the Campaign Reform Act of 1974 addressed that issue. (See 5 U.S.C. Ch. 15).

Excepted employees

Presently, the disciplining of employees in the excepted service, other than Presidential appointees, is the responsibility of the agency head, not the Commission. The legislation corrects this inconsistency by making the Commission responsible for the investigation of all alleged violations of the law by employees as defined in the bill. The Board is responsible for the adjudication of alleged violations and the imposition of penalties upon employees.

District of Columbia

The committee recognizes the imperative of self-government for the District of Columbia. It considered excluding employees of the District of Columbia from this legislation at such time as that Government enacts legislation governing the political activity of its employees. This possibility was rejected by the committee because of legal impediments.

ments. If and when the District of Columbia enacts such legislation, the committee will consider excluding District of Columbia employees from this legislation.

Indirect coercion

The Civil Service Commission is concerned that it will encounter difficulty in enforcing the bill's prohibition against indirect coercion and misuse of authority. Notwithstanding this reservation, the committee is confident that the Commission will successfully implement this provision with the same vigor with which it has reportedly dealt with the equally subtle acts of racial, religious, and sexual discrimination in the Federal merit system.

Political activity on duty

The committee is sensitive to the abuses of the merit system which occurred during recent administrations. It adopted an amendment excluding the President, the Vice President and noncompetitive employees in the White House from the prohibition against political activity while on duty or in Government rooms or buildings. The committee is mindful that this prohibition might be impractical and difficult to enforce. The committee does, however, believe that the partisan political activities of the President and Vice President should be the responsibility of the appropriate political organizations. It is imperative that such activities be kept as far removed from the official duties of the President and the Vice President as the public interest will permit.

Leave of absence to seek elective office

The bill requires that Federal employees, upon request, must be granted accrued annual leave and leave without pay in order to seek party or public elective office. Such leave, if requested, must be granted, thereby precluding the hindering of such candidacy by superior officials. To require that Federal employees seeking elective office must take leave without pay would give an advantage to those individuals who are fortunate enough to have adequate resources to meet their personal and familial responsibilities during a campaign.

The committee considered and rejected an amendment to require that employees who seek Federal or Statewide elective public office take leave without pay. Such a requirement is inconsistent with the purpose of this legislation—to stimulate broad participation in the Nation's political process by Federal civilian and postal employees. Further, candidacy for such offices would necessarily require a full-time effort. Under these circumstances any Federal employee would most likely elect to take leave.

Board on political activities

The bill establishes a Board on Political Activities of Federal Employees whose function is to hear and to adjudicate alleged violations of the law. In creating this independent three member Board, composed of Government employees the committee has attempted to delineate a clearer line of responsibility between the educational and investigatory functions of the Commission, on the one hand, and the adjudicative functions of the Board on the other hand.

Investigatory procedures

The 1967 Commission on Political Activity of Government Personnel found a significant time lapse between the filing of complaints and their disposition. Administrative delays in the processing of complaints are intolerable.

This legislation ensures employees the right to timely adjudication of complaints while adequately protecting and safeguarding the interests of the employees, agencies, and the public.

It establishes specific time frames within which complaints must be processed. Simple equity and justice dictate these improvements in the administration of the law.

It is expected that any employee who is the subject of Commission or Board action in the investigation or adjudication of a complaint will be permitted representation by an individual or organization of his own choosing, if he so desires.

Penalties

Under existing law, penalties for violations of the law are overly severe. Removal from office is required for any violation, unless the Commission unanimously votes against removal. In such an event, a minimum penalty of 30 days' suspension without pay must be imposed. There is no opportunity for the Commission to temper the penalty in accordance with any unique conditions concerning violation.

To maintain a deterrent effect, while providing discretion to the Board in imposing penalties, the bill permits the Board by a simple majority vote, to impose any penalty ranging from a warning to removal from office.

The bill further removes the present permanent bar upon reemployment in the same agency for violators of the act. In many cases this is a harsh penalty for the agency as well as the individual and is counterproductive to the public interest.

Subpena authority

Under existing law, the Commission has no authority to require, by subpena, testimony from potential witnesses. Without this authority, it is sometimes difficult for the Commission to secure the necessary evidence in proceedings where employees are reluctant to testify against a superior, coworker, friend, or neighbor.

Subpenas and orders for taking depositions can only be issued by a member of the Board. The committee intends, however, that to assist the Commission in its investigatory activities and to assist employees in their defense to charges, the Commission and employees will seek such subpenas and orders from the Board when circumstances dictate.

The bill further provides for the granting of immunity from prosecution to employees whose testimony is compelled under subpena.

The Commission or the Board may, in its discretion, proceed with any investigation or adjudication, notwithstanding the fact that criminal prosecution may be pending or contemplated.

Judicial review

Existing law makes no provision for judicial review of the Commission's decisions regarding Federal employees. That right is expressly

available to State and local employees under section 1508 of title 5, United States Code. The bill corrects this inequity and affords this right to Federal employees. In addition, a stay of the application of a penalty, preserving the status quo, is available. Thus, the bill guards against irreparable injury to the employee pending review. The bill further permits the award of attorney fees, should the court find that an employee has been wrongfully penalized.

Educational programs

As matters now stand, employees are generally confused as to where and how to report alleged violations of the law regulating the political activity. The committee believes that the Commission can and should be more aggressive in conducting an educational program for educating Federal employees about their political rights. The Commission on Political Activity of Government Personnel recommended that such a role could be fulfilled by an Office of Employees' Counsel and recommended that the Commission undertake a feasibility study on the establishment of such an office. No action was taken on this recommendation by the Commission.

The committee wishes to note its concern that the Commission has been of limited effectiveness in conducting a program for educating each Federal employee as to what does and does not constitute permissible political activity.

The committee expects that the Commission will undertake its educational program and evaluation in active and meaningful consultation with appropriate employee organizations. Such consultations can and should be initiated immediately upon enactment of this legislation.

The committee further believes that it is imperative that the Commission, in investigating complaints of alleged violations of law, not simply react to such allegations but aggressively seek and initiate appropriate investigations. For any number of reasons, employees may not file formal complaints.

The bill requires that the Commission notify each employee of permissible and prohibited political activities. It is the intent of the committee that this information be provided in as economic a manner as circumstances permit. If, for example, the Commission should deem it appropriate to distribute this information via employees' pay checks, the committee is hopeful that it would secure the active cooperation and support of appropriate Federal agencies.

Administrative support for the Board

The bill requires that support for the Board be provided by the Commission and the General Services Administration. Two factors influenced the committee's decision in this area. Indications are that, in all likelihood, there will be few cases requiring Board action. This judgment is based upon an analysis of the nature and number of previous complaints of alleged violations of the Hatch Act. The committee will observe developments in this area, and, should circumstances dictate, will consider appropriate legislation to deal with this issue.

BACKGROUND

Historical background of the regulation of political activity of Government employees

A review of congressional and executive proposals for the regulation of political activity by Federal civilian employees reveals that until 1939, the legislative branch never determined that a blanket prohibition on voluntary political activity by Federal employees was necessary to protect either the integrity of the Federal merit system or the political process. From the first Congress in 1791 through 1939, the Congress refused to impose such restraints on the grounds that they were unconstitutional.

Prior to 1939, all regulation of the political activity of Federal civil service employees was imposed by the executive branch. With the enactment of the Hatch Act in 1939, over 3,000 prior administrative determinations of the Civil Service Commission were incorporated into law.

Earlier, legislative attempts to limit the extent to which Federal employees could participate in voluntary political activities were successfully opposed in the Congress on the grounds that such restrictions unduly infringed upon the constitutional rights of free speech and free association. Employees were forbidden to use their authority or influence for the purpose of interfering with or coercing other employees or program beneficiaries.

In 1791, a proposed amendment to limit the political activities of inspectors of distilled spirits was defeated in the House by vote of 37 to 21 on the grounds that, "this clause will muzzle the mouths of freemen, and take away their use of their reason." (*Annals of Cong.* 1877 (1791).) In 1801, during Jefferson's administration, restrictions were proposed by the administration but were not implemented. Later, in 1838, a bill to prevent interference by Government officers with elections was introduced in the Senate by Senator Crittendon of Kentucky. The Senate Committee on the Judiciary made an unfavorable report on the Crittendon bill, calling it, "unjust, unequal, impractical, impolitic, tyrannical and unconstitutional." (*Cong. Globe, 25th Cong., 2d Sess. Appendix*, at 160 (1839).) The bill was defeated by vote of 28 to 5.

Action to limit the political activities of Government employees was taken by Secretary of State Daniel Webster in 1841. He proscribed, under penalty of removal, "partisan interference in popular elections" in order that elections "shall be free from undue influence of official station and authority," and "opinion shall also be free among the officers and agents of the Government." (Fowler, "Precursors of the Hatch Act," 47 *Miss. Valley Hist. Review* 253 (1960).) Webster's action did not proscribe voluntary partisan political activity. There were few other attempts to control the political activities of Federal employees during this period.

President Rutherford B. Hayes, in 1877, issued an Executive order providing that "no officer should be required or permitted to take part in the management of political organizations, caucuses, conventions, or election campaigns." (7 Richardson, *Messages and Papers of the Presidents*, 450-451, (1898).) The order was aimed at preventing

the coercion of public employees to engage in political activity. President Hayes was subsequently severely criticized by President James A. Garfield for "trying to effect a reform without legislative aid." (*Letter of James A. Garfield to Burke A. Hindsdale, July 25, 1880, Garfield Letter Book, James A. Garfield Papers (Manuscript Division, Library of Congress).*)

Protection for Federal officers from removal from office for political reasons was accomplished under President Garfield's successor, President Chester Arthur, with the passage of the Pendleton Civil Service Act of 1883. That Act established the Civil Service Commission and protected Federal employees from politically motivated removal from office. It did not prohibit voluntary political activity. The classified service, over which the Civil Service Commission had authority, constituted only about 10.5 percent of the total executive civil service work force of 131,208 positions. (Civil Service Commission, *the Classified Executive Service of the United States Government* 4 (1932).)

President Grover Cleveland refined the force of the Commission's rules governing the political activities of Federal employees in 1886, when he issued a circular permitting Federal employees substantially greater political participation. He made it clear that he was not condemning political activity in a blanket fashion. He expressed his concern about the use of official positions in attempts to control political movements in the following paragraph:

Individual interest and *activity* in political affairs are by no means condemned. Officeholders are neither disfranchised nor forbidden the exercise of political privileges, *but their privileges are not enlarged nor is their duty to party increased* to pernicious activity by officeholding. [Emphasis added.] (8 Richardson, *Messages and Papers of the Presidents* 494-95 (1898).)

This circular governed the political activities of Government employees until President Theodore Roosevelt issued Civil Service Rule I in 1907.

Civil Service Rule I, drawn from President Roosevelt's Executive Order No. 642, prohibited all persons in the classified service from taking an "active part in political management or political campaigns." (*Twenty-fourth Ann. Rep. of the United States Civil Service Commission* 104 (1907).)

Theodore Roosevelt had served as a Civil Service Commissioner from 1889 to 1895. He was frustrated by the Commission's lack of enforcement authority over a system in which only 25 percent of the employees were classified. The "spoils" system controlled appointments to 75 percent of all Federal offices. In 1894, while admitting that no rule governing partisanship in the classified service had been authoritatively construed and that the Commission did not have proper authority to issue such a rule, Roosevelt stated his idea of what such a rule should be.

A man in the classified service has an entire right to vote as he pleases, and to express privately his opinions on all political subjects; but he should not take any active part in political management or political campaigns. (*Eleventh Ann. Rep. of the Civil Service Commission* 20-21 (1894).)

This language is, of course, almost identical to that of the 1907 Rule and the 1939 statute.

On May 27, 1938, a special Senate committee was appointed to investigate charges that Federal public assistance monies were being utilized to influence Federal and local elections. Chaired by Senator Morris Sheppard of Texas, the committee found that the common feature of abuses was coercion or intimidation of Government employees or relief recipients to change party affiliation or to support party interests. The committee found that Federal public assistance funds were often diverted for political purposes. It recommended that such practices be made subject to criminal penalties.

The Sheppard committee considered instances of voluntary political activity by Federal employees. In each case it found that such activity did not constitute grounds for criticism. Its report contained no finding that the effectiveness of the Federal work force was compromised by voluntary political activity.

At the time, "New Deal" relief programs had expanded the Federal work force considerably. Many needy persons placed on the Federal payrolls were not in classified positions and therefore were not subject to the regulations governing partisan political activities administered by the Civil Service Commission. It has been estimated that of the total Federal work force of 953,891, only about 305,245, or about 32 percent, were in the competitive civil service.

A directive from the WPA program director that candidates or holders of elective office were prohibited from holding administrative capacities in WPA was eventually incorporated in WPA appropriation bills, beginning in 1936. Shortly thereafter, Senator Carl Hatch of New Mexico failed in his effort to add an amendment to the WPA 1938 appropriation bill making administrative employees of the WPA subject to the same restrictions imposed upon civil service workers by Rule I of the Civil Service Commission. The amendment was defeated in the Senate.

The Sheppard Committee reported to the Congress on January 3, 1939. Two months later, during the first session of the 76th Congress, Senator Hatch introduced legislation incorporating the Committee's recommendations into a single measure (S. 1871) forbidding any involvement in the affairs of a political organization by Federal employees working in nonpolicy making positions.

Summary of the legislative history of the Hatch Act

As introduced by Senator Hatch on March 20, 1939, S. 1871 contained various criminal provisions which were finally enacted and codified in title 18, United States Code. In addition, S. 1871 prohibited Federal administrative or supervisory employees from using their official authority to influence an election or from taking an active part in political campaigns. The penalty for violation of the law would be removal from Government service. The bill also provided that an employee retained the right to vote as he chose and to privately express his opinion on political subjects. This language was the forerunner of the Hatch Act prohibition which is now codified as section 7324 of title 5, United States Code.

On March 30, 1939, the Senate Committee on the Judiciary reported S. 1871. No public hearings were conducted on the bill nor was there much comment on the bill when it reached the Senate floor.

A motion by Senator Guffey to reconsider was withdrawn when Senator Hatch explained that section 9 of the bill did not apply to policymaking officials in the executive branch. Actually, there was no such express exemption in the bill. Express exempting language was, however, subsequently added by the House. The bill passed the Senate by unanimous consent.

In the House, S. 1871 was referred to the Committee on the Judiciary. The measure was reported, without public hearings, on July 5, 1939, with an amendment deleting the prohibition against taking an active part in political campaigns and the language dealing with the right of employees to vote and express political opinions.

On the House floor, S. 1871 was the subject of lengthy debate. Much of the discussion centered around section 9, which prohibited the misuse of official authority or active political management. Representatives Celler and Hobbs objected to the bill because it was overly broad. Mr. Celler contended that the measure should concern itself solely with the political activities of those in relief agencies, while Mr. Hobbs cautioned against prohibiting all political activities by Government employees, rather than just prohibiting pernicious political activities.

On the other hand, Representative Dirksen warned that, without the prohibitions of section 9, the Federal service might become a political machine. Several House Members voiced fears that the measure might place overly stringent controls on the political activities of Cabinet officers and other policymaking employees.

When a vote was finally taken on the committee amendment, the prohibition against taking an active part in political management was defeated. Mr. Hobbs then proposed to amend section 9 to provide that all persons shall retain the right to vote as they please and to express their opinions on all political subjects. This amendment, which was adopted by the House, still omitted the language prohibiting Federal employees from taking an active part in political campaigns.

Following adoption of the Hobbs amendment, the House considered an amendment to section 9, offered by Representative Dempsey, which:

(1) Specified that only executive branch employees would be covered by section 9, whereas, under the original language, the section would have applied to all Federal agency employees;

(2) Added to the prohibition against taking an active part in political management by barring nonexempt executive branch employees from taking an active part in political campaigns; and

(3) Specified that senior policymaking officials in the executive branch would be exempt from the prohibition against political campaigning.

The Dempsey amendment was approved and became part of the final measure adopted by Congress and signed into law by the President on August 2, 1939 (53 Stat. 1147). The language of section 9 has remained basically unchanged.

The enactment of the Hatch Act thus extended the proscriptions of Civil Service Rule I from 68 percent to almost all of the 953,891 Federal employees.

Since its adoption in 1939, the most significant amendment to the Hatch Act occurred in 1940, with the enactment of Public Law 76-753. In summary that law provided the following: (1) extended the political activity prohibitions to District of Columbia employees and to State and local government employees whose principle employment is in connection with a federally funded activity; (2) permitted Federal employees, residing in certain areas where a majority of the voters are Federal employees, to take part in local political matters; (3) amended Federal campaign laws by placing a limitation on certain contributions and expenditures; and (4) redefined the prohibitions against taking an active part in political campaigns by incorporating in the statute over 3,000 prior administrative determinations of the Civil Service Commission.

Regulation of political activities of Government employees in other nations

The subcommittee conducted a study of the prevailing practices in several other democratic nations with respect to the regulation of voluntary political activities by public employees. The countries surveyed were Sweden, France, Australia, Great Britain, West Germany, Canada, and Japan.

In Sweden, civil servants enjoy the same political rights as other citizens. They may join a political party, work actively in its behalf and become a candidate for Parliament. The Swedish Parliament contains a number of public employees who continue to receive a part of their pay as public workers as well as the normal compensation attached to the legislative office they hold. The only restrictions placed on public employees are that they must be objective in fulfilling their official duties; they are not permitted to participate in activities of political parties in their official capacity; and they must carry out the orders of their superiors even though complying with such orders is contrary to their own political views.

In France, civil servants are divided into two groups. The great majority of them have complete freedom to become members of political parties and to participate in their activities. Those who hold positions of responsibility (prefects-direct agents of the government) must show greater reserve—that is, they must not disclose the fact that they are civil servants when engaged in political activities, nor use information which they have acquired by virtue of their office, nor stand for election within the area of their prefecture (nor may they stand there until after they have left the area for 6 months). All other civil servants can run for election to Parliament (leave with pay status) while in active service. If elected they are placed in detached service but are taken back in, if they desire, when they relinquish their seat in Parliament. While serving in Parliament, they retain all pension and promotion rights as if they had never left active service.

In Australia, public servants may express opinions freely at all levels. The only prohibition on political expression is that they may not divulge departmental information. They can run for Parliament but must resign from the civil service before or upon nomination for election. (Public servants may contest state elections without resigning if the applicable laws of an individual state permits). They have full reappointment rights if they fail to be elected or desire to return after completing their term in office.

In Great Britain, employees are divided into three categories—industrial and nonindustrial workers (composed of service, maintenance and manipulative employees); an intermediate group (technical and clerical services and lower professional and administrative categories); and, senior civil servants (executive classes; those in executive, professional, scientific, technical, and administrative classifications).

Industrial and nonindustrial workers are free to engage in political activity, they can run for elective office but must resign if they run for Parliament, although they retain full reinstatement rights to return to active service. The intermediate group is free to take part in all political activities, with the permission of their department head, except Parliamentary candidature (they may run for local office without departmental permission). Senior civil servants are barred from taking part in national political activities. With permission, they may participate in political activities on the local level.

In West Germany, civil servants have the right of expression—with *moderation and restraint*. They must not divulge information obtained through government employment. Public officers have, through professional associations acting as pressure groups, become party activists and legislators. Government employees, on duty or acting in any official capacity, must refrain from any political activity. Anyone who wishes to run for Parliament must be given a leave of absence. If successful, the employee must resign from the civil service. After completing a term of office a civil servant may be reinstated provided that the general civil service requirements are met.

In Canada, deputy heads and employees are not permitted to participate actively in any election for membership in the House of Commons, the provincial legislatures and the Councils for the territories. They may not work for, on behalf of, or against any political party. They may attend, however, political meetings and make contributions to political funds. Employees may request a leave of absence without pay in order to become a candidate for national or local office. They must resign if successful. They may return to their former positions if unsuccessful.

In Japan, prior to 1947, classified government employees were permitted unlimited voluntary political participation. As a result, one political party was established within the government which frequently obstructed national policy. At the conclusion of World War II hostilities, the Commander of the Army of Occupation decreed that adequate safeguards should be established to protect the public against interruption of services by public employees. Shortly thereafter, the Japanese government outlawed all political activities by its employees.

Hearings

The public hearings conducted by the Subcommittee on Employee Political Rights and Intergovernmental Programs on H.R. 3000 constituted the first extensive congressional hearings held on the regulation of political activity of Government employees. There was widespread agreement among nonadministration witnesses that the Hatch Act was antiquated, repressive, overly broad and vague, and in need of revision. The subcommittee held 11 days of public hearings—4 in Washington and 7 in various cities around the country.

Two evening sessions were conducted in Annandale, Va., and Riverdale, Md., in order to receive testimony from active and retired Federal employees and others who were deeply interested in the bill. The public participation in these hearings was impressive.

In all, the subcommittee received testimony from 107 witnesses—individuals, employee organizations, civil rights groups, and local and national elected officials. Of the 107, 86 expressed support for amending the Hatch Act while only 21 wanted to retain the present Act.

The overwhelming sentiment which surfaced during these hearings was that the Hatch Act was overly broad, vague, and repressive in nature, and that it infringed upon the constitutionally guaranteed rights of free speech and free association.

Thomas Matthews, an attorney and consultant to the bipartisan independent Commission on Political Activities of Government Personnel stated:

The vagueness and confusion of the present statute makes it a sword of Damocles constantly hanging, uncertainly, over the heads of millions of federal employees. That uncertainty inhibits them in the exercise of rights protected by the First Amendment and encourages them to exercise self-censorship beyond the actual prohibitions of the statute because it is difficult, if not impossible, to determine the reach of the law with confidence.

Numerous active and retired Federal civilian employees who came before the subcommittee attested to the fact that they were hesitant to participate voluntarily in the political life of this Nation because they were uncertain as to exactly what they could or could not do.

Many witnesses were unfamiliar with existing regulations governing political activities of Federal employees. This comes as no surprise when one reviews the regulations issued by the Civil Service Commission—they are contradictory, ambiguous and confusing. These regulations, along with the over 3,000 administrative determinations made by the Commission which constitute the Hatch Act, would make any Federal employee fearful of becoming politically involved. Instead, employees tend to sit back and “play it safe.” Incongruously, at a time when this country should be encouraging active participation by its citizens, almost 3 million Federal employees have been politically sterilized.

Case after case presented before the subcommittee conclusively demonstrated the undue hardship imposed by the Hatch Act upon Federal employees. Several reported incidents involved Federal employees who could not take an active role in the campaign of their spouse for elective office. According to a witness from New York:

I must be left so to speak in the “dog house” stuck with babysitting at home while my wife as a county committee-woman is allowed full freedom. It is indeed very frustrating for me not to enjoy this political freedom especially since it would take place when I’m off duty from my job and therefore would not present a conflict of interest in performing my duties on the job.

Another employee ran for public office to seek improvement of the conditions in state mental hospitals—he was found in violation of the Hatch Act and removed from his position.

Still another employee who attempted to become involved in community service came up against big business interests which aimed to destroy a local park in favor of an industrial site. Local citizens asked him to take up the banner of saving the environment. The employee discontinued his activities when he was told by his employing agency that if he continued he would be found in violation of the Hatch Act. As he stated to the subcommittee:

Because I was a federal employee . . . my effectiveness as a spokesman for the citizens in the [Park] matter were curtailed, the city administration used it as a club, and the corporation had its way. We lost the part, and just as I had predicted, my neighborhood is deteriorating, blight has set in, and many of our influential neighbors have moved. Our home values have gone down and pollution is destroying us.

No conclusive evidence was presented during the hearings that voluntary political activity by Federal employees endangered the integrity of the merit system. All witnesses agreed that coercive or involuntary political activity was an area which must be controlled in order to safeguard Federal employees against possible abuses of official authority.

The committee differentiates between voluntary and involuntary political activity and aims to prevent the latter which does erode the integrity of the merit system. Witnesses suggested the best way to accomplish this was through a listing of those activities which clearly operated against the public interest and which should therefore be prohibited.

Criticism was also leveled against the Commission's lack of active enforcement of the Hatch Act. Witnesses suggested that adjudications of alleged violations of law should rest with an independent tribunal leaving the Commission to conduct investigations of complaints and to undertake a educational program to inform Federal employees as to their political rights.

Witnesses also complained that the current penalties under the Hatch Act were too severe. Existing law requires that any infraction be punished by removal from office, unless, by unanimous vote, the Commission decides otherwise.

The consensus was that penalties should be of a civil nature and should be applied according to the circumstances involved. Clarence Mitchell of the NAACP addressed himself to this issue:

It must be remembered that the Hatch Act was passed at a time when fines and jail sentences were almost routinely added to new laws. There is little to show that such penalties have improved the quality of society nor have they kept wrongdoers from carrying out schemes against the public interest.

SECTION ANALYSIS

The first section provides that this Act may be cited as the "Federal Employees' Political Activities Act of 1975".

Subsection (a) of section 2 of the bill amends subchapter III of chapter 73 of title 5, United States Code, by rewriting seven existing sections (5 U.S.C. 7321-7327) and adding four new sections (5 U.S.C. 7328-7331). The revised and expanded provisions of subchapter III are explained below by code section references.

Political participation

Section 7321 sets forth the policy of the Congress that employees should be encouraged to fully exercise, to the extent not expressly prohibited by law, their rights of voluntary political participation in the political processes of the Nation. The phrase "should be encouraged to fully exercise, to the extent not expressly prohibited by law", reflects the committee's belief that any legislation restricting political activities by employees should do so expressly, and that in the absence of an express prohibition, an employee may, of his own volition, engage in any political activity.

In this regard, the bill includes, in most instances in revised language, those prohibitions in the Criminal Code which pertain to political activities of Federal employees (see, 18 U.S.C. 594, 597, 599, 600, 601, 602, 603, 606, 607). In other instances the bill includes, with minor revisions, definitions in the Criminal Code (see, 18 U.S.C. 591 (b) and (e)).

With the inclusion of these provisions the committee intends this bill to serve as a codification of the restrictions on political activities of employees. With the exception of sections 602 and 607 of title 18, which the bill amends to permit certain previously prohibited activities by employees, the criminal provisions remain unchanged. Accordingly, any activity by an employee which violates one or more of the criminal provisions cited above (including sections 602 and 607, as amended by the bill), would also constitute a violation of section 7323, 7324, or 7325 of title 5, as amended by the bill.

Definitions

Section 7322, consisting of 6 numbered paragraphs, defines various terms for purposes of subchapter III.

Paragraph (1) defines "employee" to mean any individual, including the President and the Vice President, employed or holding office in: (A) an Executive agency; (B) the government of the District of Columbia; (C) the competitive service; or (D) the United States Postal Service or the Postal Rate Commission. Thus, all officers and employees of Executive agencies and the District of Columbia, whether they are in the competitive service (see, 5 U.S.C. 2102) or the excepted service (see, 5 U.S.C. 2103) are included in the definition. Also included are those employees in the legislative and judicial branches who hold positions in the competitive service. Members of the uniformed services are specifically excluded from the definition.

Paragraph (2) defines "candidate." The definition is similar to that presently found in the Criminal Code (see, 18 U.S.C. 591(b), as amended) and provides that the term "candidate" means any individual who seeks nomination for election, or election, to an elective office, whether or not the individual is elected. Thus an individual who is seeking to win a party's nomination in a primary election or in a convention as well as an individual who has already been nominated and is seeking election to a particular office is included within the definition. Subparagraphs (A) and (B) of paragraph (2) establish the point in time at which an individual is deemed to seek nomination for election, or election, as that time when an individual has: (A) taken the action required to qualify for nomination for election, or election; or (B) received political contributions or made expenditures, or has

given consent for any other person to receive political contributions or make expenditures, with a view to bringing about that individual's nomination for election, or election.

Paragraph (3) defines "political contribution." The committee intends that this definition be given a broad interpretation.

Subparagraph (A) of paragraph (3) provides that "political contribution" means a gift, subscription, loan, advance, or deposit of money or anything of value, made for the purpose of influencing the nomination for election, or election, of any individual to elective office or for the purpose of otherwise influencing the results of any election. The phrase "anything of value" is intended to include the use of real or personal property and the rendering of any personal service. The phrase "for the purpose of otherwise influencing the results of any election" reflects the committee's intent that contributions made to influence the results of elections relating to matters other than political office, for example, bond issues or local referenda, are included within the term "political contribution".

Subparagraph (B) provides that the term "political contribution" includes a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a political contribution.

Subparagraph (C) provides that the term "political contribution" also includes the payment by any person, other than a candidate or a political organization, of compensation for the personal services of another person which are rendered to a candidate or political organization without charge.

Paragraph (4) defines "superior" to mean an employee, other than the President or the Vice President, who exercises supervision of, or control or administrative direction over, another employee. The definition is intended to include those employees who, through the exercise of the authority of their position, may influence or affect the career advancement or working conditions of other employees. Thus an employee who has the authority to promote (or recommend or approve the promotion of) another employee, or to assign work to, or to evaluate the performance of, another employee would be deemed a "superior".

Paragraph (5) defines "elective office" to mean any elective public office and any elective office of any political party or affiliated organization. The phrase "elective public office" is intended to include any Federal, State, or local office which is filled by the election of an individual. The phrase "elective office of any political party or affiliated organization" is intended to include offices of a political party or organization such as committeeperson, convention delegate, president, or chairperson which are filled by the election of an individual.

Paragraph (6) defines "Board" to mean the Board on Political Activities established under section 7327 of title 5, as amended by the bill.

Use of official authority or influence; prohibition

Section 7323 sets forth prohibitions on the use of official authority or influence for political purposes and defines "use of official authority or influence".

Subsection (b) of section 7323 defines "use of official authority or influence for purposes of subsection (a)" as including, but not limited to, promising to confer or conferring any benefit (such as appointment,

promotion, compensation, grant, contract, license, or ruling), or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, compensation, grant, contract, license, or ruling). The parenthetical matters are examples only, and the committee intends, for purposes of subsection (a) of section 7323, "use of official authority or influence" to include the conferring, denying or affecting of any benefit emolument, or other thing which may be within the authority of an individual as a government employee to confer, deny, or affect.

Subsection (a) of section 7323 prohibits an employee from using or attempting to use that employee's official authority or influence, either directly or indirectly, for political purposes. The phrase "directly or indirectly" recognizes that the use of official authority or influence may often not be manifested in an overt act but instead may be exercised in a subtle fashion. The committee intends that such subtle use or attempted use of official authority or influence for political purposes be included in the prohibition of subsection (a).

Paragraphs (1) and (2) of subsection (a) set forth the political purposes for which it is improper for an employee to use or attempt to use official authority or influence.

Paragraph (1) prohibits the use or attempted use of official authority or influence for the purpose of interfering with or affecting the result of any election. This provision is identical to one of the primary prohibitions of the present Hatch Act (5 U.S.C. 7324(a) (1)).

Paragraph (2) of subsection (a) prohibits the use or attempted use of official authority or influence for the purpose of intimidating, threatening, coercing, commanding, or influencing, or attempting to intimidate, threaten, coerce, command, or influence: (A) any individual with regard to the right of that individual to vote, or not to vote, as that individual may choose, or to cause an individual to vote for or against any candidate or measure; (B) any person to give or withhold any political contribution; or (C) any person to engage, or not to engage, in any form of political activity whether or not the activity is prohibited by law. It should be noted that although the committee intends that it be the policy of the Congress, as set forth in section 7321 discussed above, to encourage employees to fully exercise their rights of political participation, the committee also intends that the prohibitions in subsection (a) of section 7323 provide protection against the use of official authority or influence for those employees who choose not to engage in political activity.

Solicitation; prohibition

Section 7324 sets forth prohibitions applicable to employees with regard to soliciting, accepting, receiving, or giving political contributions.

Paragraph (1) of section 7324 prohibits an employee from giving or offering to give a political contribution in return for any individual's vote, or abstention from voting, in any election.

Paragraph (2) of section 7324 prohibits an employee from soliciting, accepting, or receiving a political contribution in return for his vote or abstention from voting.

Paragraphs (1) and (2) parallel, with minor rewording, existing prohibitions in the Criminal Code pertaining to the buying or selling

of votes (see, 18 U.S.C. 597), and it is the intention of the committee that any act prohibited by the criminal provision also be prohibited by these paragraphs.

Paragraph (3) of section 7324 prohibits an employee from knowingly giving or handing over a political contribution to a superior of that employee. The phrase "superior of that employee" is intended to limit the prohibition to instances where an employee makes a political contribution to a superior who has the authority to affect that particular employee's employment. Thus, while an employee may not give a political contribution to another employee who is his superior, an employee is not prohibited from giving a political contribution to another employee solely because the other employee is a superior as defined in paragraph (4) of section 7322. For example, an employee of one agency is not prohibited from giving a political contribution to a supervisory employee of another agency.

Paragraph (4) of section 7324 sets forth two prohibitions against the solicitation or receipt of political contributions by employees.

Subparagraph (A) of paragraph (4) prohibits an employee from knowingly soliciting, accepting, or receiving, or being in any manner concerned with soliciting, accepting, or receiving, a political contribution from another employee (or a member of another employee's immediate family) with respect to whom the employee is a superior. As with the prohibitions in paragraph (3) discussed above, the phrase "with respect to whom such employee is a superior" is intended to limit the prohibition to instances where a superior has the authority to affect an employee's employment. In most instances where an employee is a superior with respect to another employee, both employees would be in the same agency. The inclusion of the phrase "member of an employee's immediate family" is intended to prohibit possible circumvention of the literal prohibition against a superior soliciting political contributions from an employee such as where a superior solicits a contribution from the employee's wife. A member of an employee's immediate family would generally include those blood relations who reside in the employee's household, although in certain instances it could include other relations such as parents, children, brothers, or sisters, who reside in the nearby vicinity, and whose decision to give or not to give a political contribution to a superior of an employee could be affected by the superior-employee relationship.

Subparagraph (B) of paragraph (4) prohibits an employee from knowingly soliciting, accepting, or receiving, or being in any manner concerned with soliciting, accepting, or receiving, a political contribution in any room or building occupied in the discharge of official duties by: (i) an individual employed or holding office in the Government of the United States, in the government of the District of Columbia, or in any agency or instrumentality of the foregoing; or (ii) an individual receiving any salary or compensation for services from money derived from the Treasury of the United States. Thus, an employee is prohibited from soliciting political contributions in any room or building where Federal Government business is being conducted. In addition, an employee is prohibited from soliciting political contributions in any room or building where an individual being paid from money derived from the Federal Treasury is working, for example, where an individual whose salary is paid through a Federal grant

or where an employee of a Federal contractor whose salary derives from Federal funds is working.

Subparagraph (B) parallels, with minor rewording, existing provisions in the Criminal Code (see, 18 U.S.C. 603), and it is the intention of the committee that any act prohibited by the criminal provision also be prohibited by subparagraph (B).

Political activities on duty, et cetera; prohibition

Subsection (a) of section 7325 prohibits an employee from engaging in political activity: (1) while on duty; (2) in any room or building in which an individual employed by the Government of the United States, or the government of the District of Columbia is engaged in official duties; or (3) while wearing a uniform or official insignia identifying the office or position of the employee. Subsection (a) reflects the belief of the committee that political activity of employees should not be allowed to interfere with the effective conduct of the Government's business.

Subsection (b) of section 7325, with the committee amendment, excludes from the prohibitions of subsection (a), the President, the Vice President, and an individual: (A) paid from the appropriation for the White House Office; (B) paid from funds to enable the Vice President to provide assistance to the President; or (C) on special assignment to the White House Office, unless such individual, described under (A), (B), or (C), holds a career or career-conditional appointment in the competitive service.

Leave for candidates for elective office

Section 7326 authorizes leave without pay and accrued annual leave to be granted to employees who are candidates for elective office.

Subsection (a) of section 7326 provides that an employee who is a candidate shall, upon that employee's request, be granted leave without pay for the purpose of engaging in activities relating to that employee's candidacy. It should be noted that there is no requirement that an employee who is a candidate take leave without pay, but if the employee requests such leave without pay, the employing agency must grant the request.

Subsection (b) of section 7326 provides that an employee who is a candidate shall, upon that employee's request, be granted accrued annual leave for the purpose of engaging in activities relating to that employee's candidacy. As is the case with leave without pay, an employee is not required to take accrued annual leave, but if the employee requests such leave, the employing agency must grant the request, notwithstanding the provision in section 6032(d) of title 5 which provides that the granting of annual leave is within agency discretion. The term "accrued annual leave" means that an employee is entitled only to that amount of annual leave which he has actually earned. An agency is not required to advance annual leave.

Under section 7326, an agency is only required to grant leave to an employee who is a *candidate*, as defined in section 7322(2), and to prevent possible abuses of leave requests, an agency should verify that an employee is actually a *candidate* before granting a request. An employee's right to be granted leave without pay or accrued annual leave is extinguished immediately following election day whether or not the employee is elected or at such other time when the candidacy termi-

nates such as the date on which or employee withdraws from candidacy. The phrase "to engage in activities related to such candidacy" reflects the committee's intent that leave under this section is to be used primarily for such activities. Thus, an agency may deny a request for leave under this section if it is apparent that the leave is requested for other activities, unrelated to the employee's candidacy.

Subject to the foregoing qualifications, the decision as to whether to take leave without pay, accrued annual leave, or a combination of both, rests with the employee who is a candidate. If an employee who is a candidate does not take leave and engages in activities relating to that candidacy or other political activity while on duty, such activities would violate section 7325 discussed above.

Board on Political Activities of Federal Employees

Section 7327 establishes the Board on Political Activities of Federal Employees.

Subsection (a) establishes the Board and provides that its function shall be to hear and decide cases regarding violations of sections 7323, 7324, and 7325 of title 5. Thus, the Board's authority is adjudicatory only, with actual investigatory, prosecutorial, and enforcement authority being given to the Civil Service Commission under section 7328. discussed below.

Under subsection (b), the Board is composed of three members. One member, who shall serve as Chairman, is appointed by the President. One each of the other two members is appointed by the Speaker of the House and the President pro tempore of the Senate, respectively. All three members are subject to confirmation by both Houses of the Congress.

Subsection (c) provides that the members shall be chosen on the basis of their professional qualifications from among individuals who, at the time of their appointment to the Board, are employees as defined under section 7322(1) of title 5, as amended by the bill.

Under paragraph (1) of subsection (d), the members are appointed for a term of three years, and the terms are staggered so that one member's term expires each year. An individual appointed to fill a vacancy may be appointed only for the unexpired term of the member he succeeds. Vacancies shall be filled in the same manner in which the original position was filled.

Paragraph (2) of subsection (d) provides that if a member of the Board ceases to be an employee due to separation from the service, he may not continue as a member of the Board for longer than 60 days after he becomes separated. The committee intends that a member who ceases to be an employee as defined under section 7322(1) but who otherwise remains an employee of the Federal Government, e.g. a non-competitive employee of the Legislative branch, shall be deemed to have separated from service for purposes of this subsection.

Subsection (e) provides that the Board shall meet at the call of the Chairman.

Subsection (f) provides that all decisions of the Board with respect to the exercise of its duties and powers must be made by a majority vote of the Board.

Subsection (g) prohibits a member of the Board from delegating, except as otherwise expressly provided, his vote or any decision making authority vested in the Board.

Subsection (h) requires the Board to prepare and publish in the Federal Register, written rules for the conduct of its activities. Subsection (h) further provides that the Board's official seal shall be judicially recognized and requires the Board to have its office in or near the District of Columbia. The Board, however, may meet and exercise its powers anywhere in the United States, and it is intended that adjudicatory hearings will be held by the Board at locations which take into consideration the convenience of the parties concerned.

Subsection (i) requires the Civil Service Commission to provide clerical and professional personnel and administrative support. It is intended that personnel such as secretaries and attorneys will be furnished to the Board from the Commission and that administrative expenses such as travel expenses for Board members will be the responsibility of the Commission. The Chairman of the Board is required to determine what clerical and professional personnel and administrative support are appropriate and necessary, and personnel furnished to the Board are responsible to the Chairman of the Board.

Past experience indicates that the nature and number of cases involving violations of the restrictions on political activity are such that a full-time adjudicatory body is not necessary. In making determinations with regard to necessary and appropriate personnel, the committee intends that the Chairman of the Board carefully consider the nature and volume of the work to be performed by the personnel.

Subsection (j) requires the Administrator of the General Services Administration to furnish suitable office space, appropriately furnished and equipped. The equipment contemplated by this subsection would include such items as typewriters and stationery supplies necessary for the Board to carry out its functions. The responsibility for determining what may appropriately be provided to the Board under this subsection rests with the Administrator.

Subsection (k) relates to pay and leave for members of the Board. Paragraph (1) of subsection (k) provides that members shall receive no additional pay on account of their service on the Board. Paragraph (2) of subsection (k) provides that members are entitled to leave without loss of or reduction in pay, leave, or performance or efficiency rating during a period of absence while in the actual performance of duties vested in the Board.

Investigations; procedures; hearings

Section 7328 provides for enforcement of the prohibitions on political activity and establishes procedures for the investigation and adjudication of violations of such prohibitions.

Subsection (a) of section 7328 requires the Civil Service Commission to investigate reports and allegations of any activity prohibited by section 7323, 7324, or 7325 of title 5, as amended by the bill. It is the committee's intent that enforcement efforts by the Commission under this subsection not be limited to responding to formal reports or allegations, but additionally, that such efforts include all steps necessary to insure that the prohibitions are observed by employees.

Subsection (b) of section 7328 requires that the Commission provide an employee who is under investigation with the opportunity to make a statement and submit documentary evidence concerning matters under investigation. This subsection also authorizes Commission

employees lawfully assigned to investigate violations of subchapter III to administer oaths in the course of an investigation.

Paragraph (1) of section 7328(c) requires the Commission, if it appears after investigation that a violation has not occurred, to so notify the employee and the employing agency.

If it appears to the Commission after investigation that a violation has occurred, the Commission is required under paragraph (2) of section 7328(c) to submit to the Board and serve upon the employee a notice by certified mail, return receipt requested, if possible. The notice must: (A) set forth specifically and in detail the charges of alleged prohibited activity; (B) advise the employee of the penalties which may be imposed for violations; (C) specify a period of not less than 30 days within which the employee may file with the Board a written answer to the charges; and (D) advise the employee that unless a written answer is filed within the prescribed time, the Board is authorized to treat the failure to answer as an admission of the charges set forth in the notice and as a waiver by the employee of the right to a hearing on the charges.

Paragraph (3) of section 7328(c) establishes a separate procedure for cases concerning elected officials or employees appointed by the President against whom the Board has no authority to direct disciplinary action. The committee does not intend for the Board to adjudicate cases concerning elected Federal officials. The only individuals to whom the procedure under paragraph (3) applies are: (A) the Vice President; (B) an employee appointed by the President by and with the advice and consent of the Senate; (C) an employee whose appointment is expressly required by statute to be made by the President; (D) the Mayor of the District of Columbia; or (E) the Chairman or a member of the Council of the District of Columbia. If it appears to the Commission that a violation of section 7323, 7324, or 7325 has been committed by one of these individuals, it is required to refer the case to the Attorney General and to report the nature and details of the violation to the President and to the Congress.

Subsection (d) of section 7328 prescribes the procedures for hearings concerning violations of sections 7323, 7324, and 7325.

Paragraph (1) of section 7328(d) provides that if a written answer is not duly filed within the time allowed therefor, the Board is authorized to issue its final decision and order without further proceedings.

If an answer is duly filed, paragraph (2) requires a hearing on the record conducted by a hearing examiner appointed under section 3105 of title 5. Except as otherwise expressly provided under subchapter III, the hearing shall be conducted in accordance with the requirements of subchapter II of chapter 5 of title 5 (formerly the Administrative Procedure Act). Paragraph (2) further requires that the hearing be commenced within 30 days after the answer is filed, and that it be conducted without unreasonable delay. As soon as possible after the conclusion of the hearing, the hearing examiner is required to serve his recommended decision upon the Board, the Commission, and the employee, with notice that exceptions to such decision may be filed within 30 days. The Board is required to issue its final decision within 60 days after the recommended decision is served.

The last sentence in paragraph (2) provides that an employee shall not be removed from active duty by reason of the alleged violation of subchapter III before the effective date of the Board's final order.

Subsection (e) of section 7328 authorizes the Board to issue subpoenas, order depositions, and compel testimony of an employee.

Paragraph (1) of section 7328(e) authorizes any member of the Board, upon written request of the Commission or an employee who is charged, to require by subpoena the attendance and testimony of witnesses and the production of documentary or other evidence, which is relevant to the proceeding or investigation. Paragraph (1) further authorizes any member of the Board and any hearing examiner authorized by the Board to administer oaths, examine witnesses, and receive evidence. In the case of a refusal to obey a subpoena, the Board is authorized to seek judicial enforcement in the United States district court for the judicial district where the subpoena is served or where the person subject to the subpoena resides. Failure to obey a court order enforcing the subpoena may be punished as a contempt of court.

Paragraph (2) of section 7328(e) authorizes the Board (or a member designated by the Board) to order the taking of written depositions which shall be subscribed by the deponent.

Paragraph (3) of section 7328(e) authorizes the Board to compel the testimony or production of evidence by an employee notwithstanding any claim of the privilege against self-incrimination. Paragraph (3) further provides that no employee, having claimed the privilege against self-incrimination, shall be prosecuted or subjected to any penalty or forfeiture for or on account of the matter about which the employee has testified or produced evidence and, in addition, that no compelled testimony or evidence shall be used as evidence in any criminal proceeding (other than a proceeding for perjury) against the employee in any court.

Section 7328(f) provides for judicial review of an order of the Board. An employee upon whom a penalty is imposed is permitted 30 days from the issuance of the Board's order to institute an action for review in the United States District Court for the District of Columbia or in the district court for the judicial district in which the employee resides or is employed. An order of the Board may be stayed only upon an order of the court.

Upon receiving the required copy of the summons and complaint, the Board is required to certify and file with the court the record of the proceeding. If, upon application, the court determines to its satisfaction that (1) additional evidence may materially effect the result of the proceeding, and (2) there were reasonable grounds for failure to adduce the evidence at the administrative hearing, it may order further proceedings before the Board, and if further proceedings are ordered, the Board may modify its original findings of fact or its order and shall file with the court such modified findings or order. The Board's findings of fact are conclusive if supported by substantial evidence. If the court determines that the order is not in accordance with law it shall remand the proceeding to the Board with appropriate instructions and may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred by the employee.

Section 7328(g) provides that the Commission or the Board, in its discretion, may proceed with an investigation or proceeding notwith-

standing the fact that a concurrent criminal investigation is in progress. The committee recognizes that many violations of this subchapter may also constitute violations of various criminal provisions. While it has generally been the practice in the past to hold a civil investigation in abeyance pending the results of a criminal investigation into the same or related matters, the usual result in cases involving alleged illegal political activities has been a decision not to proceed with a criminal prosecution and a concomitant delay of 12 to 18 months in the civil investigation. In view of this experience, it is the committee's belief that in most instances prompt resolution of proceedings under subchapter III is of primary importance, and such proceedings generally should not be interrupted or delayed.

Penalties

Section 7329 sets forth the penalties which the Board may order in the case of an employee who is found to have violated any provision restricting activities of employees under sections 7323, 7324, and 7325, and specifies the manner in which the penalty shall be imposed.

Subsection (a) provides that, subject to and in accordance with the procedures for investigation and hearing under section 7328, the Board shall, upon finding that an employee has violated any provision of section 7323, 7324, or 7325 of title 5, enter a final order directing disciplinary action against the employee. It should be noted that any order of the Board directing such action must, in accordance with section 7327 (f), be made by a majority vote of the Board.

The three paragraphs of subsection (a) set forth the range of disciplinary action which the Board may order. Under paragraph (1) the Board may order the removal of an employee and, in addition if removal is ordered, the Board shall prescribe a period of time during which the employee may not be reemployed in any position (other than an elected position) in which the employee would be subject to the provisions of subchapter III.

Under paragraph (2) of subsection (a) the Board may order the suspension without pay of an employee for such period as the Board may prescribe. Under paragraph (3) of subsection (a) the Board may, in its discretion order lesser forms of penalties as it deems appropriate.

The committee recognizes that certain violations are necessarily more serious than others and intends that the penalty provisions of subsection (a) give complete discretion to the Board with regard to the severity of the penalty to be imposed so that whatever penalty is ordered may be tailored to the nature of the actual violation.

Subsection (b) requires the Board to notify the Commission, the employee, and the employing agency of any penalty it has imposed. It is then the responsibility of the employing agency to effect the disciplinary action, and that agency is required to certify to the Board the measures it has undertaken to implement the penalty ordered by the Board.

Educational program : reports

Subsection (a) of section 7330 requires the Commission to establish and conduct a continuing program to inform all employees of their rights of political participation and to educate employees with respect to those political activities which are prohibited. It is the committee's

intent that the Commission take all necessary steps to insure that employees understand the law with regard to political activities, particularly with regard to which activities are permitted and which are prohibited, in order that employees may, to the maximum extent permissible, engage in political activities they so choose.

The last three sentences of subsection (a) as added by the committee amendment, further require the Commission to annually inform each employee, individually in writing, of each employee's political rights and the restrictions under subchapter III.

The Commission may determine the appropriate date for providing the required information to each employee, but in order to insure that the information is provided at a useful time, the date chosen by the Commission may not be less than 60 days prior to the earliest primary election for State or Federal elective office in the State where an employee is employed. If a State has no primary election, the date of the earliest general election is determinative. For purposes of this section, the term "State" includes the District of Columbia, and the Commonwealths, territories, and possessions of the United States. The manner in which the required information is provided to each employee is left to the administrative discretion of the Commission, so long as appropriate written information is provided to every employee personally.

Subsection (b) of section 7330 requires the Commission to submit, on or before March 30 of each calendar year, a report regarding the discharge of its responsibilities under subchapter III during the proceeding calendar year. The report is to be submitted to the Speaker of the House of Representatives and the President pro tempore of the Senate for referral to the appropriate committees of the Congress. Each report is required to include information concerning; (1) the number of investigations conducted under section 7328 and the results of those investigations; (2) the name and position or title of each individual involved, and the funds expended by the Commission, in carrying out the educational program required under subsection (a); and (3) an evaluation of the educational program which describes the manner in which the Commission has carried out the program and the effectiveness of the program with regard to insuring that employees understand their political rights and the restrictions under subchapter III.

Regulations

Section 7331 requires the Civil Service Commission to prescribe such rules and regulations as may be necessary to carry out its responsibilities under this subchapter. It should be noted that under section 7327(h) the Board on Political Activities of Federal Employees is required to prepare and publish rules for the conduct of its activities. Rules and regulations promulgated by the Commission under this section may pertain only to matters within the responsibility and authority of the Commission, as provided by this subchapter, such as investigatory procedures to be followed by the Commission and Commission interpretations of the statutory restrictions on political activities.

Technical and conforming amendments

Subsection (b) of section 2 of the bill contains several technical and conforming amendments to title 5, United States Code.

Paragraph (1) of subsection (b) amends section 8332(k) (1), relating to civil service retirement coverage, section 8706(e), relating to civil service life insurance coverage, and section 8906(e) (2), relating to civil service health insurance coverage, by inserting a reference to leave without pay granted under section 7326(a) of title 5, as amended by this bill, in each of those sections. The effect of these amendments is to permit an employee who is a candidate and who is granted leave without pay under section 7326(a) of title 5, as amended by the bill, to elect, within 60 days after entering on leave without pay, to continue under the civil service retirement, life insurance, or health insurance programs.

An employee who elects to continue in one or more of those programs is required to arrange through his employing agency to pay currently into the appropriate fund an amount equal to the employee and the agency contributions. An employee who so elects may continue in a program for as long as that employee remains in a leave without pay status. With regard to retirement benefits, failure of an employee to make the required election precludes the period spent on leave without pay from being included as creditable service for retirement purposes. With regard to health and life insurance benefits, the failure of an employee to make an election will result in termination of coverage under those respective programs only if the employee continues on leave without pay for longer than 12 months. The provisions of subsection (b) of section 2 relating to retirement, health insurance, and retirement coverage, accord identical treatment to employees who enter on leave without pay for purposes of engaging in candidacy for elective office as is presently accorded to employees who enter on leave without pay to serve as officers of employee organizations.

Section 2(b) (2) amends section 3302 of title 5, relating to the President's authority to prescribe rules for necessary exceptions from certain provisions of title 5, by striking out the references to sections 7321 and 7322 in existing subchapter III of chapter 73 of title 5. Under the new subchapter III, as revised by the bill, all exceptions from the provisions of that subchapter are expressly set forth in the subchapter itself. Accordingly, no authority for additional exceptions is deemed necessary.

Section 2(b) (3) amends section 1308(a) of title 5, relating to annual reports of the Civil Service Commission, by striking out paragraph (3) relating to reports of the Commission concerning its actions under existing section 7325 of title 5. The reporting requirements of section 7330 of title 5, as provided by the bill, supersede the existing reporting requirements. The remaining paragraph of section 1308(a) is appropriately redesignated.

Section 2(b) (4) corrects an existing technical error in the second sentence of section 8332(k) (1) by striking out "second" and inserting in lieu thereof "last".

Section 2(b) (5) of the bill amends the section analysis for subchapter III of chapter 73 of title 5 to reflect the changes made by section 2(a) of the bill.

Amendments to the Criminal Code

Section 2(c) of the bill amends sections 602 and 607 of title 18, United States Code, relating to solicitations and making of political

contributions, by adding a new sentence at the end of each section to provide that those sections do not apply to any activity of an employee, as defined in section 7322(1) of title 5, unless such activity is prohibited by section 7324 of that title. Since section 7324 of the bill, relating to solicitations and making of political contributions, permits employees to engage in certain activities which are presently prohibited under sections 602 and 607, this amendment is necessary to insure that an employee is not criminally liable for an activity that, although permissible under the bill, would, except for this amendment, be prohibited under section 602 or 607. It should be noted that the amendments to the criminal provisions pertain only to activities by "employees" as defined under section 7322(1) of title 5. Accordingly, the criminal prohibitions applicable to other individuals who are covered by the prohibitions in sections 602 and 607 of title 18, remain unchanged.

Amendments to other laws

Section 2(d) of the bill is a conforming amendment which amends section 6 of the Voting Rights Act of 1965 (42 U.S.C. 1973d), relating to the appointment of Federal voting examiners, by striking out "the provisions of section 9 of the Act of August 2, 1939, as amended (5 U.S.C. 118i), prohibiting partisan political activity", and inserting in lieu thereof "the provisions of subchapter III of chapter 73 of title 5, United States Code, relating to political activities".

Section 2(e) is a conforming amendment which amends sections 103(a) (4) (D) and 203(a) (4) (D) of the District of Columbia Public Education Act, relating to the employment of officers and educational employees of Federal City College and the Washington Technical Institute, by striking out "sections 7324 through 7327 of title 5" and inserting in lieu thereof "section 7325 of title 5".

Effective date

Section 2(f) provides that the amendments made by section 2 of the bill shall take effect on the ninetieth day after the date of enactment of the act.

Costs

Past experience indicates that the nature and number of the cases requiring adjudication by the Board will be few. Accordingly, the bill provides for personnel and administrative support to be furnished by the Civil Service Commission and the General Services Administration. The committee anticipates, therefor, that the provisions relating to the Board will not result in any significant cost to the Federal Government.

The investigation of allegations of violations will be conducted by the Civil Service Commission the same as under the existing law. The committee has no information on which to base an estimate of the cost of administering this legislation.

COMPLIANCE WITH CLAUSE 2(1)(3) OF RULE XI

With respect to the requirements of clause 2(1)(3) of Rule XI of the House of Representatives—

(A) The Subcommittee on Employee Political Rights and Intergovernmental Programs is vested under Committee Rules with

legislative and oversight jurisdiction and responsibility over the subject matter and conducted extensive hearings on the matter. The subcommittee findings and recommendations in connection with its oversight responsibilities are embodied in the bill as reported:

(B) The bill does not provide new budget authority or new or increased tax expenditures and thus a statement required by section 308(a) of the Congressional Budget Act of 1974 is not necessary;

(C) No estimate and comparison of costs has been received by the committee from the Director of the Congressional Budget Office, pursuant to section 403 of the Congressional Budget Act of 1974; and

(D) The committee has received no report from the Committee on Government Operations of oversight findings and recommendations arrived at pursuant to clause 2(b) (2) of Rule X.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1) (4) of Rule XI of the Rules of the House of Representatives, the committee has concluded that the amendments made by H.R. 8617 will not result in any significant cost or inflationary impact on prices and costs in the operation of the national economy.

ADMINISTRATIVE VIEWS

Set forth below are the reports on this legislation from the Office of Management and Budget, the U.S. Civil Service Commission, the U.S. Postal Service, the Comptroller General of the United States, the Internal Revenue Service, the Department of the Treasury, and the Department of Justice.

EXECUTIVE OFFICE OF THE PRESIDENT.

OFFICE OF MANAGEMENT AND BUDGET.

Washington, D.C., April 2, 1975.

HON. DAVID N. HENDERSON,

Chairman, Committee on Post Office and Civil Service, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to the Committee's request for the views of this Office on H.R. 719, H.R. 1306, H.R. 1326, H.R. 1675, and H.R. 3000, all bills primarily concerned with political activity of Federal employees.

The principal purpose of these bills is to repeal the restrictions in existing law on active participation by Federal employees in partisan political activities. In its report, the Civil Service Commission states a number of reasons for strongly opposing elimination of such restrictions.

We concur in the views expressed by the Civil Service Commission and, accordingly, strongly recommend against enactment of any of these bills.

Sincerely,

JAMES F. C. HYDE, JR.,

Acting Assistant Director for Legislative Reference.

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., March 24, 1975.

HON. DAVID N. HENDERSON,
*Chairman, Committee on Post Office and Civil Service, House of Rep-
 resentatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in reply to your letter requesting the Commission's views on H.R. 3000, H.R. 1306, and H.R. 1675, bills "To restore to Federal civilian employees their rights to participate, as private citizens, in the political life of the Nation, to protect Federal civilian employees from improper political solicitations, and for other purposes"; on H.R. 1326, a bill "To amend title 5, United States Code, to permit Federal officers and employees to take an active part in political management and in political campaigns;" and on H.R. 719, a bill "To amend, title 5, United States Code, to permit Federal, State and local officers and employees to take an active part in political management and in political campaigns."

The Commission opposes enactment of these bills for several reasons.

In our opinion, the primary thrust of these bills is to repeal the existing restrictions on political activities as set forth at 5 U.S.C. 7324(a)(2). This provision prohibits Federal employees and employees of the District of Columbia from participation in partisan political management and partisan political campaigns.

A secondary thrust of these bills, with the exception of H.R. 1326 and H.R. 719, is to revise and expand 5 U.S.C. 7323 so as to clarify responsibilities and procedures under this section. The Commission does not disagree with the basic intent of the proposed revision. However, we do note that there is no indication in subsection (c) of section 7323 as to action to be taken, if any, concerning those employees in the excepted service who are not Presidential appointees. Further the provision that an employee may "make a contribution to any candidate" may conflict with 18 U.S.C. 607, administered by the Department of Justice, which prohibits an employee from giving to a Senator or Member of or Delegate to Congress "money or other valuable thing on account of or to be applied to the promotion of any political object." Additionally, a secondary thrust of H.R. 719 is to repeal the restriction on candidacy for elective office as set forth at 5 U.S.C. 1502(a)(3). This prohibition applies to State or local officers or employees whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a Federal agency.

The Commission's major area of concern, however, is with the primary thrust of these bills which would allow employees virtually unlimited political activity, both partisan and nonpartisan, even at the national level. This goes far beyond the proposals to liberalize the political activity restrictions as recommended by the Commission on Political Activity of Government Personnel.

Where advancement in the public service is predicated exclusively upon merit, the entire society benefits from a more efficient and honest public service. Since 1883, this Commission, acting at the direction of the President and under Congressional enactments, has endeavored to insure that Federal employment and Federal personnel management are anchored on the principle of merit, free from the influence of political partnership.

We are convinced that some restriction on the ability of public employees to identify themselves prominently with partisan political party success is essential to an effective merit system. While the political activity of specific employees may appear to be innocuous in itself, the effect of such activity generally is that public employees become identified with the aspirations of political parties and candidates, and partisan considerations are injected into the career service. The identification of a civil servant with a political party through active participation in party affairs compromises that employee in the eyes of the public, and most certainly in the eyes of an opposing party during a change in administrations. Competition among employees for advancement and favor based on their contribution of money or services to political parties would also detract from the efficient administration of public business. Our conclusion is that the intrusion of partisan considerations into the career Federal service, even in appearance, would constitute a devastating blow to merit concepts, and to employee morale as well.

We, of course, favor the retention of the prohibition on the misuse of official authority to influence elections, as well as the restrictions on the solicitation and exchange of political contributions among Federal officers and employees. However, in our view, those limitations alone, even as revised and expanded by H.R. 3000, H.R. 1306 and H.R. 1675, are wholly inadequate to protect employees from the subtle pressures that would impel them to engage in other forms of political activity in order to protect or enhance their employment situation. Without the protection of a public policy that limits the political activities of public employees, an employee would be vulnerable to indirect influence to support the political party or candidates favored by those in a position to affect the employee's government career. Under current restrictions everyone knows that a covered employee cannot serve political purposes, except at the risk of loss of employment. This protection of the Federal employee would be discarded by the proposed legislation.

Similar restrictions, which previously applied to State and local employees in Federally financed programs, were repealed by section 401 of the Federal Election Campaign Act Amendments of 1974 (P.L. 93-443). The restriction against political management and political campaigning was replaced by a prohibition against being a candidate for elective office. It was our view at the time that amendment was passed (without public hearings of any kind), and it continues to be our view, that such a drastic change in the law would be seriously detrimental to the maintenance and operation of effective merit systems on the State and local levels, and would be contrary to the purpose and spirit of the original political activity legislation.

We believe that to go further, as would H.R. 719, and repeal the remaining prohibition against candidacy for elective office, would be an error of major proportions and would result in further impairment of effective merit systems at the State and local levels.

We think it significant that after nearly a year of study of the Hatch Act, the Commission on Political Activity of Government Personnel concluded that protection of a career system based on merit not only "requires strong sanctions against coercion . . . [but] also requires some limits on the role of the government employee in politics." Volume I, Report of the Commission on Political Activity of Government Personnel-Recommendations, page 3.

Apparently employees, too, feel some apprehension regarding the effect of amendments that would permit more political activity on their part. A survey of Federal employees, conducted by the same Commission in 1967, disclosed that more than half (52%) of those contacted believe that such changes would effect promotions, decisions, job assignments, and similar actions. Of the State employees surveyed, a fairly high percentage (42.3%) felt that the merit system would be hindered if all restrictions on political activity were removed. Volume II, Report of the Commission on Political Activity of Government Personnel-Research, pages 21 and 78 (1968). We believe the employees' fears stem from a realistic view of politics in relation to the public service.

The foregoing should in no way, of course, be construed as a total indictment against political activity of Federal employees. We would note, for example, that under existing law Federal employees are free to engage in a wide variety of activities. The Hatch Act does not circumscribe the entire field of political activity, but, rather, carefully directs its prohibitions to what Congress regarded as particular sources of danger to the public service, namely, direct participation by employees in the management and campaigns of major political parties. A wide range of freedom to participate in the political processes of the Nation, State, and the local community is permitted under the existing law.

Accordingly, the Commission opposes enactment of these bills.

The Office of Management and Budget advises that from the standpoint of the Administration's program, there is no objection to the submission of this report.

By direction of the Commission:

Sincerely yours,

ROBERT HAMPTON,
Chairman.

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., June 24, 1975.

HON. DAVID N. HENDERSON,
Chairman, Committee on Post Office and Civil Service, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: On March 25, 1975, when I testified before the Subcommittee on Employee Political Rights and Intergovernmental Programs on H.R. 3000, "Federal Employees' Political Activities Act of 1975," it was suggested by Mr. Wilson that it would be helpful if we could provide a section-by-section analysis of the proposed bill. We previously submitted a bill report expressing our disagreement with the bill generally. We are herewith providing a section-by-section analysis as requested by Mr. Wilson.

Section 2 of the proposed bill, which would amend 5 U.S.C. 7323, provides that employees in an Executive agency, Presidential appointees, Members of Congress, and officers of the uniformed services "may not request or receive from, or give to" any other such employee, appointee, Member, or officer "a thing of value for political purposes," except that "an employee may freely and voluntarily make a contribution to any candidate for public office of his own volition."

The proposed section would extend to Presidential appointees (including those requiring the advice and consent of the Senate), Members of Congress, and officers of the uniformed services, the same restrictions on requesting, receiving, and giving political contributions as are currently applicable to employees in Executive agencies. The proposed section would also give to the Commission the responsibility for processing complaints arising under the section, conducting appropriate investigations, and determining whether a violation has in fact occurred.

The Commission is in agreement with the basic intent of this section. However, we note that while the action to be taken by the Commission in cases involving violations on the part of competitive service employees and Presidential appointees is made clear in subsections (c) (1) and (c) (2), there is no indication as to what action is to be taken in cases involving employees in the excepted service who are not Presidential appointees. Such employees are subject to the section by virtue of being employees "in an Executive agency," but the proposed bill does not set forth the action to be taken by the Commission when it finds a violation on the part of such an employee. We would recommend, therefore, that the proposed section be amended so that the Commission can impose a penalty, such as for competitive service employees, or notify the head of the employing agency of the Commission's determination of a violation and the penalty deemed to be appropriate.

We would also point out that section 607 of title 18, United States Code, which is within the jurisdiction of the Department of Justice, prohibits an employee from "directly or indirectly giv[ing] . . . to any Senator or Member of or Delegate to Congress . . . any money or other valuable thing on account of or to be applied to the promotion of any political object . . ." We have consistently advised employees that they may make voluntary contributions to the duly constituted campaign committees of any candidate, including the campaign committees of incumbent Senators and Members of Congress. Therefore, in order to avoid any uncertainty, we would recommend that the provision of proposed section 2 which states that "... an employee may freely and voluntarily make a contribution to any candidate for public office on his own volition . . ." be amended to read "... any employee may make a voluntary contribution to a political party or organization, including the duly constituted campaign committee of any candidate."

Section 3 of the proposed bill amends 5 U.S.C. 7234, which presently prohibits the misuse of an employee's official authority or influence to interfere with or affect the result of an election, and also prohibits employees from taking an active part in political management and political campaigns. The proposed bill would continue the present prohibition on misuse of official authority and influence. In our view, and based on our enforcement experience, this provision is not adequate as an "anti-coercion" provision, yet it is the only "anti-coercion" provision contained in the proposed bill. We feel that it is too vague in its meaning and there is no reasonable guidance in the present law or the proposed bill as to what is required to affect or interfere with the result of an election. It should be noted that the political activity provisions applicable to State and local employees working in Fed-

erally funded programs contain, in addition to a prohibition on misuse of official authority or influence [5 U.S.C. 1502(a)(1)], a separate prohibition which states that a covered employee may not "directly or indirectly coerce, attempt to coerce, command, or advise a State or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political purposes." We would strongly recommend that a similar provision be included in any future legislation relative to the political activity of Federal employees. We would also recommend the inclusion of a provision which would establish a presumption of coercion whenever a superior solicits a subordinate employee to make a political contribution or to engage in any form of political activity.

Section 3 would also have the effect of repealing the current prohibition on employees taking an active part in political management and political campaigns. It would set forth some nine specifically permitted activities, including "candidacy for nomination or election to any National, State, county, or municipal office." We have previously presented our views with respect to a total relaxation of the management and campaigning restrictions, that being the major thrust of my March 25 testimony before the Subcommittee on this bill. Suffice it to say here that we view the particular section of the bill, if enacted, as a very real and serious threat to the maintenance of an impartial and effective career service.

Section 4 of the bill retains the current minimum penalty of thirty days' suspension without pay for violation of section 7324. The same penalty provisions would apply to violations of proposed section 7323. Currently, 5 U.S.C. 7323 specifies that an employee who violates that section will be removed from the service. Proposed section 4 would require that an employee would be subject to removal for violation of sections 7323 and 7324 only upon unanimous vote of the Commission that removal is warranted. This is a departure from the current law which makes removal mandatory unless the Commissioner unanimously determines that a lesser penalty is warranted. Since the only cases which arise under the proposed bill would be cases involving misuse of official authority in violation of proposed section 7324, or the soliciting, giving, or receiving of contributions in violation of proposed section 7323, it is our view that removal should be the mandatory penalty unless the Commission determines by unanimous vote that a lesser penalty would be appropriate. In this regard, it is our view that the Commission should be given the discretion to assess a penalty of less than 30 days, e.g., 5 days without pay, if in their judgment such lesser penalty would be more equitable under the circumstances of the case. This would be particularly important if the proposed bill were to be amended so that some management and campaign activities would still be prohibited.

Section 5 would repeal current sections 7326 and 7327 of title 5, United States Code. 5 U.S.C. 7326 currently provides that the prohibition on taking an active part in political management and political campaigns does not preclude activity in connection with nonpartisan campaigns and elections, i.e., campaigns and elections in which none of the candidates is to be nominated or elected as representing a political party any of whose candidates for presidential elector received votes in the last preceding election at which presidential electors were selected. 5 U.S.C. 7327 provides for the designation, by the Commission,

of excepted localities impacted with Federal employees, to permit employee-residents to take an active part in partisan campaigns and elections at the local level, to the extent the Commission determines to be in the domestic interest. Both of the above referenced sections would be unnecessary under the proposed bill, since there would no longer be a prohibition on partisan political management and campaigning. As noted above we are in disagreement with the repeal of the management and campaigning provision.

Section 6 of the proposed bill would amend section 602 of title 18, United States Code, to require the Attorney General to prosecute violations of 5 U.S.C. 7323 referred by the Commission, or to report to the Congress, in writing, the reasons such prosecution was declined. We have no objection to such an amendment. However, jurisdiction of title 18 is solely within the Department of Justice.

In conclusion, while we have no objections to certain sections of the proposed bill, we do object strongly to that provision which would eliminate the existing prohibition on partisan management and campaigning.

By direction of the Commission :

Sincerely yours,

ROBERT E. HAMPTON,

Chairman.

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., July 17, 1975.

HON. DAVID N. HENDERSON,
*Chairman, Committee on Post Office and Civil Service,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: The Civil Service Commission desires to submit for consideration by the Committee our comments with respect to the Committee Print of July 7, 1975, cited as the "Federal Employees' Political Activities Act of 1975," which was ordered reported in the form of a clean bill by the Subcommittee on Employee Political Rights and Intergovernmental Programs.

This Commission has, over the years, consistently been opposed to any legislation which would remove or substantially relax the political activity restrictions which current Federal law places on Federal employees in the Executive branch. This opposition is based, not on any misguided interest in retaining a programmatic responsibility, but, rather, on a sincere and historically founded belief that a relaxation of the political activity restrictions would pose a very real and serious threat to the maintenance of a career merit system. The enactment of such legislation would deprive employees of the protections which they now enjoy from the subtle, sometimes even unintended, pressures which can be and would be brought to bear.

As I testified before the Subcommittee on March 25, 1975, it is an empty hope that provisions against coercion, no matter how tightly drawn they might be, can alone protect the merit system against the encroachment of partisan political influences. It is the prohibition against active participation in partisan political management and partisan political campaigns which constitutes the most significant

safeguard against coercion—whether from superiors in the Federal service, or from outsiders. Employees realize that partisan political activity can subject them to removal, and know that those persons who could request them to be politically active have no greater threat than that. Because of the management and campaigning provisions of the Hatch Act, most employees know that they need not respond to political requests or suggestions. This entire protective fabric would be destroyed if the prohibitions against political management and campaigning are removed, as is being proposed in the bill to be considered by the Committee. We believe that whatever political activity is permitted to employees will eventually become that which is required of them. We do not believe, as has been stated by the public employee organizations, that Federal employees overwhelmingly, or that even a majority of them, are in favor of repealing the management and campaigning prohibition. We believe the opposite to be true.

Moreover, by limiting the Government employee's involvement in partisan politics, the Hatch Act reduces the likelihood that an employee will allow partisan political views to interfere with the impartial execution of the Government's business. The current Hatch Act makes it impossible for the party in power to turn the Federal work force into an organized instrument for affecting the outcome of elections. Equally important, in our view, is the concern that involvement in partisan political activities on the part of Federal employees, being observed by the public, will erode public confidence in the impartial administration of Federal laws and programs. When the public sees at work a Federal employee who is prominently identified with partisan politics, and at the same time is charged with responsibility for the impartial, nonpartisan execution of public duties, it will inevitably have doubts about that employee's impartiality. One of the frequently made observations concerning the recent "Watergate" revelations, was the manner in which the daily operation of the Government continued uninterrupted, due in large measure to the dedication and efforts of impartial civil servants in the career service. It seems incongruous for the Congress to now seriously entertain a proposal to deprive the Federal service of that shield of impartiality. It seems to us that anything which has the clear potential for undermining the public's confidence in the impartiality and efficiency of the civil service should be rejected.

In addition to these concerns with the proposed bill in general, we would like to direct the Committee's attention to several other of the provisions which we feel are particularly troublesome.

Since, for the purposes of the proposed bill [§ 7322(1)], the President and Vice President are deemed to be employees, they are, unless otherwise specifically excepted, covered by the political activity restrictions applicable to other employees. Thus, under proposed section 7325, they would be prohibited from engaging in any political activity" while on duty, or in any room or building occupied in the discharge of official duties. . . ." An incumbent President would not be permitted, under this provision, to engage in any campaign activities, including campaign planning meetings or making campaign speeches, within his offices at the White House. A question which immediately presents itself, of course, is, when is a President, or a Vice President, not on duty?

We are also troubled by the relaxation on the exchange of contributions among employees which results from section 7324. The Congress has previously recognized the need to restrict any solicitation or receipt of political contributions among employees, regardless of whether there exists a superior-subordinate relationship. The seriousness with which Congress has viewed this matter is evidenced by the existence of prohibitory provisions in the criminal code. Now it is being proposed that even those criminal provisions be amended, and that employees, with the exception of those in a superior-subordinate relationship, be permitted to freely solicit and receive contributions from one another. The possibilities for abuse are obvious. We would point out that the current restrictions do not preclude or inhibit an employee from making a voluntary contribution to the duly constituted campaign organization of any candidate, including that of an incumbent Member of Congress.

We seriously question the effectiveness of enforcement of the prohibition on an employee engaging in campaign or management activities while on duty, if the employee is not required to take a leave of absence from his or her job to become a candidate. Proposed section 7326 would require agencies to grant a leave of absence to an employee-candidate upon request, but does not require the employee to take a leave of absence.

In our view, the requirement that the employees appointed to be Members of the Board on Political Activities of Federal Employees under proposed section 7327 receive the confirmation of a majority of both Houses of Congress, serves no useful purpose and unnecessarily burdens the appointment process. We also have some reservations about the constitutional status of the Board, but would defer to the Department of Justice on that issue. We would also point out that there was no credible evidence introduced during the hearings before the Subcommittee that the Commission's performance of the responsibilities which would now be assumed by the Board has ever been inadequate or subject to serious criticism. We accordingly see no need for a new Board.

We note that no course of action is specified under section 7328 (c) (3) should it appear that the President has committed a violation. We also note that subpoenas and orders for taking depositions can only be issued by Members of the Board [§ 7328(e) (1) and (2)].

Because we feel strongly that enactment of any legislation of the type embodied in the subject Committee Print would have serious deleterious effects on the impartial administration of and public confidence in the Federal civil service, we strongly urge that the Committee not report the proposed legislation favorably to the House. We should not turn our backs on a 50 year period of American history.

The Office of Management and Budget advises that there is no objection to the submission of this report and that enactment of this bill would not be in accord with the program of the President.

By direction of the Commission:

Sincerely yours,

ROBERT E. HAMPTON,
Chairman.

U.S. POSTAL SERVICE,
Washington, D.C., May 22, 1975.

HON. DAVID N. HENDERSON,
Chairman, Committee on Post Office and Civil Service, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Postal Service on H.R. 3000, the proposed "Federal Employees' Political Activities Act of 1975."

The management of the Postal Service is dedicated to the concept, implemented by the Postal Reorganization Act, that partisan politics should not be allowed to interfere with the operation of the nation's postal system. We think it would be a mistake for Congress to take any action which could be interpreted or understood as a signal to reinstate the highly political atmosphere in which the old Post Office Department was operated. Accordingly, we recommend against the application to the Postal Service of any legislation such as H.R. 3000 which, we believe, would permit the injection of partisan political considerations into every level of postal operations from the mailroom floor to executive decision-making. As a practical matter it is our judgment that postal employees cannot be permitted to actively and openly participate in partisan politics as anticipated by H.R. 3000 without such activity inevitably becoming an influence in the operation of the Postal Service.

The most serious objection to H.R. 3000, from a postal standpoint, is that it would permit the erosion of the generally accepted idea or understanding that postal officers and employees, as such, are expected to be non-partisan. However, an examination of H.R. 3000 also reveals a number of specific ways in which the bill would permit partisan political activity to impinge upon everyday Federal and postal operations.

For example, as amended by the bill, 5 U.S.C. § 7324(c) (5) and (8) would allow Federal and postal employees to distribute campaign literature, distribute and wear campaign badges and buttons, initiate and sign nominating petitions, and canvass for the signatures of others. In their present form, clauses (5) and (8) would not prohibit campaigning and canvassing in a Federally owned or operated facility; nor would they forbid campaigning and canvassing by employees during working hours, or while in uniform, or while otherwise performing official duties. Similarly, proposed § 7324(c) (9) contains no requirement that an employee who is a candidate for national, state, county or municipal office, or an employee who is elected or appointed to such an office, take an unpaid leave of absence when his candidacy or his official duties unduly infringe upon his Federal job performance. Indeed, proposed § 7324 contains no explicit prohibition against the use of Federal facilities, materials, personnel, or working hours by employees who are taking an active part in political management or in political campaigns.

Obviously, the absence of safeguards in proposed new § 7324 presents significant opportunities for the abuse of Federal and postal resources and employment by employees engaged in political activity. The Government's work will not be done efficiently or economically by employees who are dispensing political literature along with

stamps, or having their secretaries type and duplicate campaign speeches as well as official reports. Moreover, allowing employee political activity during working hours will facilitate improper coercion and "arm twisting" of employees who do not share the political persuasions of their supervisors or fellow employees.

For the reason stated, the Postal Service opposes the enactment of H.R. 3000.

Sincerely,

W. ALLEN SANDERS,
Assistant General Counsel, Legislative Division.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., June 10, 1975.

HON. DAVID N. HENDERSON,
*Chairman, Committee on Post Office and Civil Service,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: By letter of May 5, 1975, you requested our report on H.R. 3000, 94th Congress, 1st Session, a bill "To restore to Federal civilian employees their rights to participate, as private citizens, in the political life of the Nation, to protect Federal civilian employees from improper political solicitations, and for other purposes."

The bill would amend sections 7323, 7324, and 7325 of title 5, United States Code, commonly known as the Hatch Act. Sections 7326 and 7327 of title 5, United States Code, would be repealed.

The proposed amendment of sections 7323 and 7325 would shift emphasis from removal of Federal employees for violations of the Hatch Act to lesser penalties, and correspondingly reduce the protection of Federal civilian employees from improper political solicitations.

The proposed amendment to section 7324 would permit a Federal employee to take an active part in political management or in political campaigns as a private citizen, including candidacy for nomination or election to any National, State, County, or municipal office, without involving his official authority or influence. We question whether this is possible. We believe any active participation by a Federal employee in political activities could involve or give the appearance of a conflict-of-interest situation. Without guidelines of maximum specificity of what constitutes official authority or influence, it would be virtually impossible to monitor or control the political involvement of a Federal employee.

Some modifications of the provisions of the Hatch Act, particularly as they relate to political activity in local communities, appear desirable. Changes of the scope proposed by the bill, however, would place an unmanageable administrative burden on the merit system and would dilute the protections afforded Federal employees by the Hatch Act.

Accordingly, it is recommended that the legislation not be enacted.

Sincerely yours,

ELMER B. STAATS,
Comptroller General of the United States.

DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE,
Washington, D.C., May 13, 1975.

HON. DAVID N. HENDERSON,
*Chairman, House Post Office and Civil Service Committee, House of
Representatives, Washington, D.C.*

DEAR CHAIRMAN HENDERSON: I understand that Congressman Clay is now conducting a series of hearings by his subcommittee on H.R. 3000, a bill to revise the present Hatch Act, which restricts political activity of government employees. While I was not invited to testify on this legislation, I have read the bill, and testimony about it, including a strong statement in opposition by Chairman Hampton of the Civil Service Commission. It seems to me that if H.R. 3000 passes in its present form, it would damage the appearance of non-partisan objectivity in the conduct of Federal tax administration, which I believe is essential to maintaining public confidence in the Internal Revenue Service.

The Service's top manager in the North-Atlantic Region, Regional Commissioner Elliott Gray, recently testified on the bill before Congressman Clay in New York City. Mr. Gray was appearing in his private capacity as a concerned citizen and life-time civil servant, rather than as a representative of the Administration. I am attaching a copy of his statement, which I believe is an excellent expression of the problems we in Internal Revenue see in H.R. 3000.

The Civil Service Commission has a fine booklet, on the "Do's" and "Don't's" for employee political activity, under the present Hatch Act. The trouble is that too many Federal employees are not familiar with these rules, and they lean over backward and avoid even permissible political activities. It would be helpful if the present specific restrictions, the "Do's" and "Don't's", were spelled out clearly in the law itself, rather than being inferred from a body of Civil Service Commission and court decisions on a vaguely-worded statute.

I also would like to see provision for a positive education program for government employees, on what they can and can't do in political matters. Perhaps this could be jointly undertaken by the Civil Service Commission, agency training officials, and the unions, with materials and training aids provided by government funds. I would also like to see authorization for a flexible range of penalties and corrective actions, administered in accordance with the circumstances of particular cases of infringement on the rules.

What I definitely would not like to see, however, and certainly not in the Internal Revenue Service, is a return to the bad old days when officials and employees whose actions and decisions affect individual members of the public, are themselves candidates for political office while serving in government jobs, or actively campaign for partisan candidates, under party sponsorship. It strikes me as improper for a revenue agent or revenue officer to go out soliciting the public for votes either for himself, as a party candidate, or for a political nominee of a party. That is what H.R. 3000 would allow, and I hope such provisions are deleted before the bill moves further towards enactment.

With kind regards,
Sincerely,

DONALD C. ALEXANDER.

THE GENERAL COUNSEL OF THE TREASURY,
Washington, D.C., June 16, 1975.

HON. DAVID N. HENDERSON,

Chairman, Committee on Post Office and Civil Service, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The Department would like to take this opportunity to comment on H.R. 3000, a bill, "To restore to Federal civilian employees their rights to participate, as private citizens, in the political life of the Nation, to protect Federal civilian employees from improper political solicitations, and for other purposes."

The primary thrust of the bill is to repeal the existing restrictions on political activities as set forth at 5 U.S.C. 7324(a) (2). This provision prohibits Federal employees and employees of the District of Columbia from participation in partisan political campaigns.

While the Department appreciates and lauds the efforts of Congress to increase the political rights of Federal employees, it is particularly concerned with the potential abuses and negative impact that such legislation could have upon the Government's merit system principles and practices. Without the protection of a public policy that limits the political activities of public employees, an employee would be vulnerable to indirect influence to support the political party or candidates favored by those in a position to affect the employee's government career.

Under current restrictions a covered employee cannot serve political purposes, except at the risk of loss of employment. By limiting the Government employee's involvement in partisan political activities, the Hatch Act serves to assure that employees will not be compelled, or feel themselves compelled, to engage in unwanted partisan political activities in order to curry political favor with their superiors and thereby enhance their prospects for continued employment or for advancement. The thin line between voluntary and involuntary contributions and participation would become even more nebulous and unprovable, and the pressures and subtle coercion to which the employee could be subjected greatly increased. This protection of the Federal employee would be taken away by the proposed legislation.

In addition, there are many agencies, including the Department of the Treasury, which have the power under law to acquire information about individuals which can be highly valuable in advancing or defeating the interests of partisan political candidates. To place employees of such agencies in a public, partisan political arena could subject them to improper pressures to divulge or misuse such information and, therefore, tend to compromise them and their agencies. The Department's Internal Revenue Service is one such office wherein the restrictions of the Hatch Act help to build and support the public confidence that is so essential to a voluntary compliance tax system founded on the belief that everybody will pay his or her just share, free of political or other improper consideration or favoritism. To remove those restrictions, as the proposed amendments would, could result in an erosion of public confidence in the impartial administration, not only of the tax system, but also of all government.

When the public sees a Federal employee who is prominently identified with partisan politics, and at the same time charged with respon-

sibility for the impartial, nonpartisan execution of public duties, it will inevitably have doubts about that employee's impartiality. By limiting the Government employee's involvement in partisan politics, the Hatch Act reduces the likelihood that the employee will allow partisan political views to interfere with the impartial execution of the Government's business. To amend the Act, as proposed by H.R. 3000, removes these safeguards.

Any benefits to Federal employees in increased political rights resulting from the liberalization of the Hatch Act by the proposed amendments of H.R. 3000 would be outweighed and overshadowed by the accompanying negative impact on the Government's merit system and on public confidence in the nonpartisan administration of Government operations. The Department of the Treasury, accordingly, strongly opposes enactment of H.R. 3000.

The Department has been advised by the Office of Management and Budget that there is no objection from the standpoint of the Administration's program to the submission of this report to your Committee.

Sincerely yours,

RICHARD R. ALBRECHT,
General Counsel.

DEPARTMENT OF JUSTICE,
Washington, D.C., June 26, 1975.

HON. DAVID N. HENDERSON,
Chairman, Committee on Post Office and Civil Service, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice on H.R. 3000, a bill "To restore to Federal civilian employees their rights to participate, as private citizens, in the political life of the Nation, to protect Federal civilian employees from improper political solicitations, and for other purposes."

The chief purpose of H.R. 3000 is to amend the Hatch Act, particularly 5 U.S.C. 7324(a), so as to permit Federal civilian and Postal Service employees to take an active part in political management or in political campaigns in their roles as private citizens and without involving their official authority or influence. Sec. 3(a). Since this provision goes to the heart of the bill, we confine our comments to it.

The phrase "active part in political management or in political campaigns" would be broadly defined (see proposed section 7324(c)), so as to permit participation by Federal employees in political activities such as the following: "Candidacy for service as a delegate in political convention; participation in the deliberations of any primary meeting, mass convention or caucus, addressing the meeting or otherwise taking a prominent part; preparing for, organizing or conducting a political meeting or rally on any partisan political matter; membership in political clubs and organizing of such a club; distributing campaign literature, badges and buttons; publishing or having editorial or managerial connection with partisan political publications; organizing a political parade; initiating and circulating nominating petitions for a partisan candidate, including canvassing for signatures; candidacy for any public office—national, state or at any other local level."

For the purpose of this section, the Hatch Act amendment would also apply to employees of the United States Postal Service. Proposed sec. 7324(d). There is no exemption for components of agencies, such as the Federal Bureau of Investigation of the Department of Justice.

In *U.S. Civil Service Commission v. National Association of Letter Carriers*, 413 U.S. 548 (1973), the Supreme Court recently sustained the constitutionality of 5 U.S.C. 7324(a) (2), which prohibits federal employees from taking an active part in political management or in political campaigns. The Court held that Congress had the power to prevent federal employees from holding a party office; working at the polls; organizing a political party or club; actively participating in fund-raising for a partisan candidate or political party; initiating a partisan nominating petition, soliciting votes for a partisan candidate for public office; or serving as a delegate to a political party convention—in sum, that Congress had authority to regulate various activities (such as H.R. 3000 would expressly permit), and that such regulation is not barred either by the First Amendment or any other provision of the Constitution. 413 U.S. at 556. In overruling these constitutional objections, the Court said (413 U.S. at 564-565):

"It seems fundamental in the first place that employees in the Executive Branch of the Government, or those working for any of its agencies, should administer the law in accordance with the will of Congress, rather than in accordance with their own or the will of a political party. They are expected to enforce the law and execute the programs of the Government without bias or favoritism for or against any political party or group or the members thereof. A major thesis of the Hatch Act is that to serve this great end of Government—the impartial execution of the laws—it is essential that federal employees not, for example, take formal positions in political parties, not undertake to play substantial roles in partisan political campaigns and not run for office on partisan political tickets. Forbidding activities like these will reduce the hazards to fair and effective government. . . .

"There is another consideration in this judgment: it is not only important that the Government and its employees in fact avoid practicing political justice, but it is also critical that they appear to the public to be avoiding it, if confidence in the system of representative Government is not to be eroded to a disastrous extent."

As the Court also pointed out, "Until now, the judgment of Congress, the Executive and the country appears to have been that partisan political activities by federal employees must be limited if the Government is to operate effectively . . . and employees themselves are to be sufficiently free from improper influences." *Id.* at 564. We are not aware of any substantial evidence within our recent experience which requires this judgment to be altered.

Apart from its consequences on federal employees in general, H.R. 3000 would be particularly objectionable so far as the Department of Justice is concerned. Under it, personnel of the Federal Bureau of Investigation would no longer have to abstain from taking an "active part in political management or political campaigns," as that term is defined in the bill. The Department of Justice feels it to be essential to the future success of the FBI that it continue to maintain the public image of complete detachment from political affairs.

For the foregoing reasons, the Department of Justice strongly opposes enactment of H.R. 3000.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

A MITCHELL McCONNELL, JR.,
Acting Assistant Attorney General.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman) :

TITLE 5, UNITED STATES CODE

* * * * *

PART II—THE UNITED STATES CIVIL SERVICE COMMISSION

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Chapter 13—Special Authority

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§ 1308. Annual reports

(a) The Civil Service Commission shall make an annual report to the President for transmittal to Congress. The report shall include—

(1) a statement of the Commission's actions in the administration of the competitive service, the rules and regulations and exceptions thereto in force, the reasons for exceptions to the rules, the practical effects of the rules and regulations, and any recommendations for the more effectual accomplishment of the purposes of the provisions of this title that relate to the administration of the competitive service;

(2) the results of the incentive awards program authorized by chapter 45 of this title with related recommendations; *and*

[(3) at the end of each fiscal year, the names, addresses, and nature of employment of the individuals on whom the Commission has imposed a penalty for prohibited political activity under section 7325 of this title with a statement of the facts on which action was taken, and the penalty imposed; and]

[(4)] (3) a statement, in the form determined by the Commission with the approval of the President, on the training of employees under chapter 41 of this title, including—

(A) a summary of information concerning the operation and results of the training programs and plans of the agencies;

(B) a summary of information received by the Commission from the agencies under section 4113(b) of this title; and

(C) the recommendations and other matters considered appropriate by the President or the Commission or required by Congress.

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Part III—Employees

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Subpart B—Employment and Retention

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Chapter 33—Examination, Selection, and Placement

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Subchapter I—Examination, Certification, and Appointment

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§ 3302. Competitive service; rules

The President may prescribe rules governing the competitive service. The rules shall provide, as nearly as conditions of good administration warrant, for—

(1) necessary exceptions of positions from the competitive service; and

(2) necessary exceptions from the provisions of sections 2951, 3304(a), 3306(a) (1), 3321, 7152, [7153, 7321, and 7322] and 7153 of this title.

Each officer and individual employed in an agency to which the rules apply shall aid in carrying out the rules.

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Subpart F—Employee Relations

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Chapter 73—Suitability, Security, and Conduct

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Subchapter III—Political Activities

Sec.

- 7321. Political contributions and services.
- 7322. Political use of authority or influence; prohibition.
- 7323. Political contributions; prohibition.
- 7324. Influencing elections; taking part in political campaigns; prohibitions; exceptions.
- 7325. Penalties.
- 7326. Nonpartisan political activity permitted.
- 7327. Political activity permitted; employees residing in certain municipalities.

SEC.

7321. *Political participation.*

7322. *Definitions.*

7323. *Use of official authority or influence; prohibition.*

7324. *Solicitation; prohibition.*

7325. *Political activities on duty, etc.; prohibition.*

7326. *Leave for candidates for elective office.*

7327. *Board on Political Activities of Federal Employees.*

7328. *Investigation; procedures; hearing.*

7329. *Penalties.*

7330. *Educational program; reports.*

7331. *Regulations.*

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[Subchapter III—Political Activities

[§ 7321. Political contributions and services

[The President may prescribe rules which shall provide, as nearly as conditions of good administration warrant, that an employee in an Executive agency or in the competitive service is not obliged, by reason of that employment, to contribute to a political fund or to render political service, and that he may not be removed or otherwise prejudiced for refusal to do so.

[§ 7322. Political use of authority or influence; prohibition

[The President may prescribe rules which shall provide, as nearly as conditions of good administration warrant, that an employee in an Executive agency or in the competitive service may not use his official authority or influence to coerce the political action of a person or body.

[§ 7323. Political contributions; prohibition

[An employee in an Executive agency (except one appointed by the President, by and with the advice and consent of the Senate) may not request or receive from, or give to, an employee, a Member of Congress, or an officer of a uniformed service a thing of value for political purposes. An employee who violates this section shall be removed from the service.

[§ 7324. Influencing elections; taking part in political campaigns; prohibitions; exceptions

[(a) An employee in an Executive agency or an individual employed by the government of the District of Columbia may not—

[(1) use his official authority or influence for the purpose of interfering with or affecting the result of an election; or

[(2) take an active part in political management or in political campaigns.

For the purpose of this subsection, the phrase “an active part in political management or in political campaigns” means those acts of political management or political campaigning which were prohibited on the part of employees in the competitive service before July 19, 1940, by determinations of the Civil Service Commission under the rules prescribed by the President.

[(b) An employee or individual to whom subsection (a) of this section applies retains the right to vote as he chooses and to express his opinion on political subjects and candidates.

[(c) Subsection (a) of this section does not apply to an individual employed by an educational or research institution, establishment, agency, or system which is supported in whole or in part by the District of Columbia or by a recognized religious, philanthropic, or cultural organization.

[(d) Subsection (a) (2) of this section does not apply to—

[(1) an employee paid from the appropriation for the office of the President;

[(2) the head or the assistant head of an Executive department or military department;

[(3) an employee appointed by the President, by and with the advice and consent of the Senate, who determines policies to be pursued by the United States in its relations with foreign powers or in the nationwide administration of Federal laws;

[(4) the Mayor of the District of Columbia, the members of the Council of the District of Columbia, or the Chairman of the Council of the District of Columbia, as established by the District of Columbia Self-Government and Governmental Reorganization Act; or

[(5) the Recorder of Deeds of the District of Columbia.

[§ 7325. Penalties

[An employee or individual who violates section 7324 of this title shall be removed from his position, and funds appropriated for the position from which removed thereafter may not be used to pay the employee or individual. However, if the Civil Service Commission finds by unanimous vote that the violation does not warrant removal, a penalty of not less than 30 days' suspension without pay shall be imposed by direction of the Commission.

[§ 7326. Nonpartisan political activity permitted

[Section 7324(a) (2) of this title does not prohibit political activity in connection with—

[(1) an election and the preceding campaign if none of the candidates is to be nominated or elected at that election as representing a party any of whose candidates for presidential elector received votes in the last preceding election at which presidential electors were selected; or

[(2) a question which is not specifically identified with a National or State political party or political party of a territory or possession of the United States.

For the purpose of this section, questions relating to constitutional amendments, referendums, approval of municipal ordinances, and others of a similar character, are deemed not specifically identified with a National or State political party or political party of a territory or possession of the United States.

[§ 7327. Political activity permitted; employees residing in certain municipalities

[(a) Section 7324(a) (2) of this title does not apply to an employee of The Alaska Railroad who resides in a municipality on the line of the railroad in respect to political activities involving that municipality.

[(b) The Civil Service Commission may prescribe regulations permitting employees and individuals to whom section 7324 of this title

applies to take an active part in political management and political campaigns involving the municipality or other political subdivision in which they reside, to the extent the Commission considers it to be in their domestic interest, when—

[(1) the municipality or political subdivision is in Maryland or Virginia and in the immediate vicinity of the District of Columbia, or is a municipality in which the majority of voters are employed by the Government of the United States; and

[(2) the Commission determines that because of special or unusual circumstances which exist in the municipality or political subdivision it is in the domestic interest of the employees and individuals to permit that political participation.]

Subchapter III—Political Activities

§ 7321. Political participation

It is the policy of the Congress that employees should be encouraged to fully exercise, to the extent not expressly prohibited by law, their rights of voluntary participation in the political processes of our Nation.

§ 7322. Definitions

For the purpose of this subchapter—

(1) “employee” means any individual, including the President and the Vice President, employed or holding office in—

(A) *an Executive agency,*

(B) *the government of the District of Columbia,*

(C) *the competitive service, or*

(D) *the United States Postal Service or the Postal Rate Commission;*

but does not include a member of the uniformed services;

(2) “candidate” means any individual who seeks nomination for election, or election, to any elective office, whether or not such individual is elected, and, for the purpose of this paragraph, an individual shall be deemed to seek nomination for election, or election, to an elective office, if such individual has—

(A) *taken the action required to qualify for nomination for election, or election, or*

(B) *received political contributions or made expenditures, or has given consent for any other person to receive political contributions or make expenditures, with a view to bringing about such individual's nomination for election, or election, to such office;*

(3) “political contribution”—

(A) *means a gift, subscription, loan, advance, or deposit of money or anything of value, made for the purpose of influencing the nomination for election, or election, of any individual to elective office or for the purpose of otherwise influencing the results of any election;*

(B) *includes a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a political contribution for any such purpose; and*

(C) includes the payment by any person, other than a candidate or a political organization, of compensation for the personal services of another person which are rendered to such candidate or political organization without charge for any such purpose;

(4) "superior" means an employee (other than the President or the Vice President) who exercises supervision of, or control or administrative direction over, another employee;

(5) "elective office" means any elective public office and any elective office of any political party or affiliated organization; and

(6) "Board" means the Board on Political Activities of Federal Employees established under section 7327 of this title.

§ 7323. Use of official authority or influence; prohibition

(a) An employee may not directly or indirectly use or attempt to use the official authority or influence of such employee for the purpose of—

(1) interfering with or affecting the result of any election; or

(2) intimidating, threatening, coercing, commanding, influencing, or attempting to intimidate, threaten, coerce, command, or influence—

(A) any individual for the purpose of interfering with the right of any individual to vote as such individual may choose, or of causing any individual to vote, or not to vote, for any candidate or measure in any election;

(B) any person to give or withhold any political contribution; or

(C) any person to engage, or not to engage, in any form of political activity whether or not such activity is prohibited by law.

(b) For the purpose of subsection (a) of this section, "use of official authority or influence" includes, but is not limited to, promising to confer or conferring any benefit (such as appointment, promotion, compensation, grant, contract, license, or ruling), or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, compensation, grant, contract, license, or ruling).

§ 7324. Solicitation; prohibition

An employee may not—

(1) give or offer to give a political contribution to any individual either to vote or refrain from voting, or to vote for or against any candidate or measure, in any election;

(2) solicit, accept, or receive a political contribution to vote or refrain from voting, or to vote for or against any candidate or measure, in any election;

(3) knowingly give or hand over a political contribution to a superior of such employee; or

(4) knowingly solicit, accept, or receive, or be in any manner concerned with soliciting, accepting, or receiving, a political contribution—

(A) from another employee (or a member of another employee's immediate family) with respect to whom such employee is a superior; or

(B) in any room or building occupied in the discharge of official duties by—

(i) an individual employed or holding office in the Government of the United States, in the government of the District of Columbia, or in any agency or instrumentality of the foregoing; or

(ii) an individual receiving any salary or compensation for services from money derived from the Treasury of the United States.

§ 7325. Political activities on duty, etc.; prohibition

(a) An employee may not engage in political activity—

(1) while such employee is on duty,

(2) in any room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States, in the government of the District of Columbia, or in any agency or instrumentality of the foregoing, or

(3) while wearing a uniform or official insignia identifying the office or position of such employee.

(b) The provisions of subsection (a) of this section shall not apply to—

(1) the President and the Vice President; or

(2) an individual—

(A) paid from the appropriation for the White House Office,

(B) paid from funds to enable the Vice President to provide assistance to the President, or

(C) on special assignment to the White House Office, unless such individual holds a career or career-conditional appointment in the competitive service.

§ 7326. Leave for candidates for elective office

(a) An employee who is a candidate for elective office shall, upon the request of such employee, be granted leave without pay for the purpose of allowing such employee to engage in activities relating to such candidacy.

(b) Notwithstanding section 6302(d) of this title, an employee who is a candidate for elective office shall, upon the request of such employee, be granted accrued annual leave for the purpose of allowing such employee to engage in activities relating to such candidacy. Such leave shall be in addition to leave without pay to which such employee may be entitled under subsection (a) of this section.

§ 7327. Board on Political Activities of Federal Employees

(a) There is established a board to be known as the Board on Political Activities of Federal Employees. It shall be the function of the Board to hear and decide cases regarding violations of sections 7323, 7324, and 7325 of this title.

(b) *The Board shall be composed of 3 members—*

(1) *one member of which shall be appointed, with the confirmation of a majority of both Houses of the Congress, by the President and who shall serve as Chairman of the Board;*

(2) *one member of which shall be appointed, with the confirmation of a majority of both Houses of the Congress, by the Speaker of the House of Representatives, after consultation with the majority leader of the House and the minority leader of the House; and*

(3) *one member of which shall be appointed, with the confirmation of a majority of both Houses of the Congress, by the President pro tempore of the Senate, after consultation with the majority leader of the Senate and the minority leader of the Senate.*

(c) *Members of the Board shall be chosen on the basis of their professional qualifications from among individuals who, at the time of their appointment, are employees (as defined under section 7322(1) of this title).*

(d) (1) *Members of the Board shall serve a term of 3 years, except that of the members first appointed—*

(A) *the Chairman shall be appointed for a term of 3 years,*

(B) *the member appointed under subsection (b) (2) of this section shall be appointed for a term of 2 years, and*

(C) *the member appointed under subsection (b) (3) of this section shall be appointed for a term of 1 year.*

An individual appointed to fill a vacancy occurring other than by the expiration of a term of office shall be appointed only for the unexpired term of the member such individual will succeed. Any vacancy occurring in the membership of the Board shall be filled in the same manner as in the case of the original appointment.

(2) *If an employee who was appointed as a member of the Board is separated from service as an employee he may not continue as a member of the Board after the 60-day period beginning on the date so separated.*

(e) *The Board shall meet at the call of the Chairman.*

(f) *All decisions of the Board with respect to the exercise of its duties and powers under the provisions of this subchapter shall be made by a majority vote of the Board.*

(g) *A member of the Board may not delegate to any person his vote nor, except as expressly provided by this subchapter, may any decision-making authority vested in the Board by the provisions of this subchapter be delegated to any member or person.*

(h) *The Board shall prepare and publish in the Federal Register written rules for the conduct of its activities, shall have an official seal which shall be judicially noticed, and shall have its office in or near the District of Columbia (but it may meet or exercise any of its powers anywhere in the United States).*

(i) *The Civil Service Commission shall provide such clerical and professional personnel, and administrative support, as the Chairman of the Board considers appropriate and necessary to carry out the Board's functions under this subchapter. Such personnel shall be responsible to the Chairman of the Board.*

(j) *The Administrator of the General Services Administration shall furnish the Board suitable office space appropriately furnished and equipped, as determined by the Administrator.*

(k) (1) *Members of the Board shall receive no additional pay on account of their service on the Board.*

(2) *Members shall be entitled to leave without loss of or reduction in pay, leave, or performance or efficiency rating during a period of absence while in the actual performance of duties vested in the Board.*

§ 7328. Investigation; procedures; hearing

(a) *The Civil Service Commission shall investigate reports and allegations of any activity prohibited by section 7323, 7324, or 7325 of this title.*

(b) *As a part of the investigation of the activities of an employee, the Commission shall provide such employee an opportunity to make a statement concerning the matters under investigation and to support such statement with any documents the employee wishes to submit. An employee of the Commission lawfully assigned to investigate a violation of this subchapter may administer an oath to a witness attending to testify or depose in the course of the investigation.*

(c) (1) *If it appears to the Commission after investigation that a violation of section 7323, 7324, or 7325 of this title has not occurred, it shall so notify the employee and the agency in which the employee is employed.*

(2) *Except as provided in paragraph (3) of this subsection, if it appears to the Commission after investigation that a violation of section 7323, 7324, or 7325 of this title has occurred, the Commission shall submit to the Board and serve upon the employee a notice by certified mail, return receipt requested (or if notice cannot be served in such manner, then by any method calculated to reasonably apprise the employee)—*

(A) *setting forth specifically and in detail the charges of alleged prohibited activity;*

(B) *advising the employee of the penalties provided under section 7329 of this title;*

(C) *specifying a period of not less than 30 days within which the employee may file with the Board a written answer to the charges in the manner prescribed by rules issued by the Board; and*

(D) *advising the employee that unless the employee answers the charges, in writing, within the time allowed therefor, the Board is authorized to treat such failure as an admission by the employee of the charges set forth in the notice and a waiver by the employee of the right to a hearing on the charges.*

(3) *If it appears to the Commission after investigation that a violation of section 7323, 7324, or 7325 of this title has been committed by—*

(A) *the Vice President;*

(B) *an employee appointed by the President by and with the advice and consent of the Senate;*

(C) *an employee whose appointment is expressly required by statute to be made by the President;*

(D) *the Mayor of the District of Columbia; or*

(E) the Chairman or a member of the Council of the District of Columbia, as established by the District of Columbia Self-Government and Governmental Reorganization Act;

the Commission shall refer the case to the Attorney General for prosecution under title 18, and shall report the nature and details of the violation to the President and to the Congress.

(d) (1) If a written answer is not duly filed within the time allowed therefor, the Board may, without further proceedings, issue its final decision and order.

(2) If an answer is duly filed, the charges shall be determined by the Board on the record after a hearing conducted by a hearing examiner appointed under section 3105 of this title, and, except as otherwise expressly provided under this subchapter, in accordance with the requirements of subchapter II of chapter 5 of this title, notwithstanding any exception therein for matters involving the tenure of an employee. The hearing shall be commenced within 30 days after the answer is filed with the Board and shall be conducted without unreasonable delay. As soon as practicable after the conclusion of the hearing, the examiner shall serve upon the Board, the Commission, and the employee such examiner's recommended decision with notice to the Commission and the employee of opportunity to file with the Board, within 30 days after the date of such notice, exceptions to the recommended decision. The Board shall issue its final decision and order in the proceeding no later than 60 days after the date the recommended decision is served. The employee shall not be removed from active duty status by reason of the alleged violation of this subchapter at any time before the effective date specified by the Board in its final order.

(e) (1) At any stage of a proceeding or investigation under this subchapter, the Board may, at the written request of the Commission or the employee, require by subpoena the attendance and testimony of witnesses and the production of documentary or other evidence relating to the proceeding or investigation at any designated place, from any place in the United States or any territory or possession thereof, the Commonwealth of Puerto Rico, or the District of Columbia. Any member of the Board may issue subpoenas and members of the Board and any hearing examiner authorized by the Board may administer oaths, examine witnesses, and receive evidence. In the case of contumacy or failure to obey a subpoena, the United States district court for the judicial district in which the person to whom the subpoena is addressed resides or is served may, upon application by the Board, issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

(2) The Board (or a member designated by the Board) may order the taking of depositions at any stage of a proceeding or investigation under this subchapter. Depositions shall be taken before an individual designated by the Board and having the power to administer oaths. Testimony shall be reduced to writing by or under the direction of the individual taking the deposition and shall be subscribed by the deponent.

(3) *An employee may not be excused from attending and testifying or from producing documentary or other evidence in obedience to a subpoena of the Board on the ground that the testimony or evidence required of the employee may tend to incriminate the employee or subject the employee to a penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the employee is compelled to testify or produce evidence. No employee shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the employee is compelled, after having claimed the privilege against self-incrimination, to testify or produce evidence, nor shall testimony or evidence so compelled be used as evidence in any criminal proceeding against the employee in any court, except that no employee shall be exempt from prosecution and punishment for perjury committed in so testifying.*

(f) *An employee upon whom a penalty is imposed by an order of the Board under subsection (d) of this section may, within 30 days after the date on which the order was issued, institute an action for judicial review of the Board's order in the United States District Court for the District of Columbia or in the United States district court for the judicial district in which the employee resides or is employed. The institution of an action for judicial review shall not operate as a stay of the Board's order, unless the court specifically orders such stay. A copy of the summons and complaint shall be served as otherwise prescribed by law and, in addition, upon the Board. Thereupon the Board shall certify and file with the court the record upon which the Board's order was based. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that the additional evidence may materially affect the result of the proceeding and that there were reasonable grounds for failure to adduce the evidence at the hearing conducted under subsection (d) (2) of this section, the court may direct that the additional evidence be taken before the Board in the manner and on the terms and conditions fixed by the court. The Board may modify its findings of fact or order, in the light of the additional evidence, and shall file with the court such modified findings or order. The Board's findings of fact, if supported by substantial evidence, shall be conclusive. The court shall affirm the Board's order if it determines that it is in accordance with law. If the court determines that the order is not in accordance with law—*

(1) it shall remand the proceeding to the Board with directions either to enter an order determined by the court to be lawful or to take such further proceedings as, in the opinion of the court, are required; and

(2) it may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred by the employee.

(g) *The Commission or the Board, in its discretion, may proceed with any investigation or proceeding instituted under this subchapter notwithstanding that the Commission or the head of an employing agency or department has reported the alleged violation to the Attorney General as required by section 535 of title 28.*

§ 7329. Penalties

(a) *Subject to and in accordance with section 7328 of this title, an employee who is found to have violated any provision of section 7323, 7324, or 7325 of this title shall, upon a final order of the Board, be—*

(1) removed from such employee's position, in which event that employee may not thereafter hold any position (other than an elected position) as an employee (as defined in section 7322(1) of this title) for such period as the Board may prescribe;

(2) suspended without pay from such employee's position for such period as the Board may prescribe; or

(3) disciplined in such other manner as the Board shall deem appropriate.

(b) *The Board shall notify the Commission, the employee, and the employing agency of any penalty it has imposed under this section. The employing agency shall certify to the Board the measures undertaken to implement the penalty.*

§ 7339. Educational program; reports

(a) *The Commission shall establish and conduct a continuing program to inform all employees of their rights of political participation and to educate employees with respect to those political activities which are prohibited. The Commission shall inform each employee individually in writing, at least once each calendar year, of such employee's political rights and of the restrictions under this subchapter. The Commission may determine, for each State, the most appropriate date for providing information required by this subsection. Such information, however, shall be provided to employees employed or holding office in any State not later than 60 days before the earliest primary or general election for State or Federal elective office held in such State.*

(b) *On or before March 30 of each calendar year, the Commission shall submit a report covering the preceding calendar year to the Speaker of the House of Representatives and the President pro tempore of the Senate for referral to the appropriate committees of the Congress. The report shall include—*

(1) the number of investigations conducted under section 7328 of this title and the results of such investigations;

(2) the name and position or title of each individual involved, and the funds expended by the Commission, in carrying out the program required under subsection (a) of this section; and

(3) an evaluation which describes—

(A) the manner in which such program is being carried out; and

(B) the effectiveness of such program in carrying out the purposes set forth in subsection (a) of this section.

§ 7331. Regulations

The Civil Service Commission shall prescribe such rules and regulations as may be necessary to carry out its responsibilities under this subchapter.

Chapter 83—Retirement

* * * * *

Subchapter III—Civil Service Retirement

* * * * *

§ 8332. Creditable service

(a) * * *

* * * * *

(k) (1) An employee who enters on *leave without pay granted under section 7326(a) of this title, or who enters on approved leave without pay* to serve as a full-time officer or employee of an organization composed primarily of employees as defined by section 8331(1) of this title, which 60 days after entering on that leave without pay, may file with his employing agency an election to receive full retirement credit for his periods of that leave without pay and arrange to pay currently into the Fund, through his employing agency, amounts equal to the retirement deductions and agency contributions that would be applicable if he were in pay status. If the election and all payments provided by this paragraph are not made, the employee may not receive credit for the periods of leave without pay occurring after July 17, 1966, notwithstanding the [second] *last* sentence of subsection (f) of this section. For the purpose of the preceding sentence, "employee" includes an employee who was on approved leave without pay and serving as a full-time officer or employee of such an organization on July 18, 1966, and who filed a similar election before September 17, 1966.

* * * * *

Chapter 87—Life Insurance

* * * * *

§ 8706. Termination of insurance

(a) * * *

* * * * *

(e) Notwithstanding subsections (a)–(c) of this section, an employee who enters on *leave without pay granted under section 7326(a) of this title, or who enters on approved leave without pay* to serve as a full-time officer or employee of an organization composed primarily of employees as defined by section 8701(a) of this title, within 60 days after entering on that leave without pay, may elect to continue his insurance and arrange to pay currently into the Employees' Life Insurance Fund, through his employing agency, both employee and agency contributions from the beginning of leave without pay. The employing agency shall forward the premium payments to the Fund. If the employee does not so elect, his insurance will continue during nonpay status and stop as provided by subsection (a) of this section.

* * * * *

Chapter 89—Health Insurance

* * * * *

§ 8906. Contributions

(a) * * *

* * * * *

(e) (1) An employee enrolled in a health benefits plan under this chapter who is placed in a leave without pay status may have his coverage and the coverage of members of his family continued under the plan for not to exceed 1 year under regulations prescribed by the Commission. The regulations may provide for the waiving of contributions by the employee and the Government.

(2) An employee who enters on *leave without pay granted under section 7326(a) of this title, or who enters on approved leave without pay* to serve as a full-time officer or employee of an organization composed primarily of employees as defined by section 8901 of this title, within 60 days after entering on that leave without pay, may file with his employing agency an election to continue his health benefits enrollment and arrange to pay currently into the Employees Health Benefits Fund, through his employing agency, both employee and agency contributions from the beginning of leave without pay. The employing agency shall forward the enrollment charges so paid to the Fund. If the employee does not so elect, his enrollment will continue during nonpay status and end as provided by paragraph (1) of this subsection and implementing regulations.

* * * * *

TITLE 18, UNITED STATES CODE

* * * * *

Chapter 29.—Elections and Political Activities

* * * * *

§ 602. Solicitation of political contributions

Whoever, being a Senator or Representative in, or Delegate or Resident Commissioner to, or a candidate for Congress, or individual elected as, Senator, Representative, Delegate, or Resident Commissioner, or an officer or employee of the United States or any department or agency thereof, or a person receiving any salary or compensation for services from money derived from the Treasury of the United States, directly or indirectly solicits, receives, or is in any manner concerned in soliciting or receiving, any assessment, subscription, or contribution for any political purpose whatever, from any other such officer, employee, or person, shall be fined not more than \$5,000 or imprisoned not more than three years or both. *This section does not apply to any activity of an employee, as defined in section 7322(1) of title 5, unless such activity is prohibited by section 7324 of that title.*

* * * * *

§ 607. Making political contributions

Whoever, being an officer, clerk, or other person in the service of the United States or any department or agency thereof, directly or indirectly gives or hands over to any other officer, clerk, or person in the service of the United States, or to any Senator or Member of or Delegate to Congress, or Resident Commissioner, any money or other valuable thing on account of or to be applied to the promotion of any political object, shall be fined not more than \$5,000 or imprisoned not more than three years, or both. *This section does not apply to any activity of an employee, as defined in section 7322(1) of title 5, unless such activity is prohibited by section 7324 of that title.*

* * * * *

SECTION 6 OF THE VOTING RIGHTS ACT OF 1965

SEC. 6. Whenever (a) a court has authorized the appointment of examiners pursuant to the provisions of section 3(a), or (b) unless a declaratory judgment has been rendered under section 4(a), the Attorney General certifies with respect to any political subdivision named in, or included within the scope of, determinations made under section 4(b) that (1) he has received complaints in writing from twenty or more residents of such political subdivision alleging that they have been denied the right to vote under color of law on account of race or color, and that he believes such complaints to be meritorious, or (2) that in his judgment (considering, among other factors, whether the ratio of nonwhite persons to white persons registered to vote within such subdivision appears to him to be reasonably attributable to violations of the fifteenth amendment or whether substantial evidence exists that bona fide efforts are being made within such subdivision to comply with the fifteenth amendment), the appointment of examiners is otherwise necessary to enforce the guarantees of the fifteenth amendment, the Civil Service Commission shall appoint as many examiners for such subdivision as it may deem appropriate to prepare and maintain lists of persons eligible to vote in Federal, State, and local elections. Such examiners, hearing officers provided for in section 9(a), and other persons deemed necessary by the Commission to carry out the provisions and purposes of this Act shall be appointed, compensated, and separated without regard to the provisions of any statute administered by the Civil Service Commission, and service under this Act shall not be considered employment for the purposes of any statute administered by the Civil Service Commission, except the provisions of [section 9 of the Act of August 2, 1939.] *subchapter III of chapter 73 of title 5, United States Code, relating to political activities*, as amended (5 U.S.C. 118i), prohibiting partisan political activity: *Provided*, That the Commission is authorized, after consulting the head of the appropriate department or agency, to designate suitable persons in the official service of the United States, with their consent, to serve in these positions. Examiners and hearing officers shall have the power to administer oath.

DISTRICT OF COLUMBIA PUBLIC EDUCATION ACT

* * * * *

TITLE I—FEDERAL CITY COLLEGE

* * * * *

SEC. 103. (a) The Board is vested with the following powers and duties:

(1) To develop detailed plans for and to establish, organize, and operate in the District of Columbia the Federal City College.

(2) To establish policies, standards, and requirements governing admission, programs, graduation (including the award of degrees) and general administration of the Federal City College.

(3) To appoint and compensate, without regard to the civil service laws or chapter 51 and subchapter III of chapter 53 of title 5, United States Code, a president for the Federal City College.

(4) To employ and compensate such officers as it determines necessary for the Federal City College, and such educational employees for the Federal City College as the president thereof may recommend in writing. Such officers and educational employees may be employed and compensated without regard to—

(A) the civil service laws,

(B) chapter 51 and subchapter III of chapter 53 of title 5, United States Code (relating to classification of positions in Government service),

(C) sections 6301 through 6305 and 6307 through 6311 of title 5, United States Code (relating to annual and sick leave for Federal employees),

(D) chapter 15 and [sections 7324 through 7327] section 7325 of title 5, United States Code (relating to political activities of Government employees),

(E) section 3323 and subchapter III of chapter 81 of title 5, United States Code (relating to civil service retirement), and

(F) sections 3326, 3501, 3502, 5531 through 5533, and 6303 of title 5, United States Code (relating to dual pay and dual employment),

but the employment and compensation of such officers and educational employees shall be subject to—

(i) sections 7902, 8101 through 8138, and 8145 through 8150 of title 5, United States Code, and sections 292 and 1920 through 1922 of title 18, United States Code (relating to compensation for work injuries),

(ii) chapter 87 of title 5, United States Code (relating to Government employees group life insurance),

(iii) chapter 89 of title 5, United States Code (relating to health insurance for Government employees), and

(iv) sections 1302, 2108, 3305, 3306, 3308 through 3320, 3351, 3363, 3364, 3501 through 3504, 7511, 7512, and 7701 of title 5, United States Code (relating to veteran's preference).

* * * * *

TITLE II—WASHINGTON TECHNICAL INSTITUTE

* * * * *

SEC. 203. (a) The Board is hereby vested with the following powers and duties:

(1) To develop detailed plans for and to establish, organize, and operate in the District of Columbia the Washington Technical Institute.

(2) To establish policies, standards, and requirements governing admission, programs, graduation (including the award of degrees) and general administration of the Washington Technical Institute.

(3) To appoint and compensate, without regard to the civil service laws or chapter 51 and subchapter III of chapter 53 of title 5, United States Code, a president for the Washington Technical Institute.

(4) To employ and compensate such officers as it determines necessary for the Washington Technical Institute, and such educational employees for the Washington Technical Institute as the president thereof may recommend in writing. Such officers and educational employees may be employed and compensated without regard to—

(A) the civil service laws,

(B) chapter 51 and subchapter III of chapter 53 of title 5, United States Code (relating to classification of positions in Government service),

(C) sections 6301 through 6305 and 6307 through 6311 of title 5, United States Code (relating to annual and sick leave for Federal employees),

(D) chapter 15 and [sections 7324 through 7327] section 7325 of title 5, United States Code (relating to political activities of Government employees),

(E) section 3323 and subchapter III of chapter 81 of title 5, United States Code (relating to civil service retirement), and

(F) sections 3326, 3501, 3502, 5531 through 5533, and 6303 of title 5, United States Code (relating to dual pay and dual employment),

but the employment and compensation of such officers and educational employees shall be subject to—

(i) sections 7902, 8101 through 8138, and 8145 through 8150 of title 5, United States Code, and sections 292 and 1920 through 1922 of title 18, United States Code (relating to compensation for work injuries),

(ii) chapter 87 of title 5, United States Code (relating to Government employees group life insurance),

(iii) chapter 89 of title 5, United States Code (relating to health insurance for Government employees), and

(iv) sections 1302, 2108, 3305, 3306, 3308 through 3320, 3351, 3363, 3364, 3501 through 3504, 7511, 7512, and 7701 of title 5, United States Code (relating to veteran's preference).

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ADDITIONAL VIEWS OF CONGRESSMAN HERBERT E. HARRIS II

As a cosponsor of H.R. 8617, and as a member of the Subcommittee on Political Rights and Intergovernmental Programs which has worked for 7 months to produce a fair and comprehensive bill, I am in full support of this legislation. The bill has two significant thrusts: it contains important new protections for Federal and postal employees and it provides them clearly defined rights they do not currently enjoy. H.R. 8617 is, in essence a "bill of political rights" for our 2.8 million Federal and postal employees. I voted to report the bill out of subcommittee and full committee.

There is one provision in the bill, however, of concern to me. Section 7325 prohibits political activities while on duty, in any room or building occupied in the discharge of official duties by an employee, or while wearing a uniform identifying the individual as a Federal or postal employee. As amended by the full committee, exempt from this provision are the President, the Vice President and their staffs.

I can understand the argument that it is unrealistic and impractical to expect the President and Vice President to avoid political activity while on the job. They, it can be argued, are on the job around the clock, and they are the only elected officials of the executive branch. However, I consider it highly inappropriate for the White House staff to engage in political activity while on duty in their capacity as employees of the Chief Executive. I am concerned that not exempting them from this provision would in effect be a congressional "go-ahead" to the White House staff to engage in political activities on the job. It unfortunately puts the Congress in the position of condoning political activity in the White House by White House staffers.

I am concerned that this provision might allow a repeat of the agonizing experience we have come to call "Watergate." Presidential campaigns should be run by campaign committees, and I'm sure the incumbent President will not make the mistakes of his predecessor. But I feel compelled to make it clear that this Member of Congress does not condone campaigns run from behind the White House walls or from the Attorney General's office. I am concerned that the fact that this bill does not expressly prohibit White House staffers from "politiicking" on the job might be interpreted as approval of the practice.

Just as Federal and postal employees should be ever-mindful of separating their work from their politics when carrying on "the people's business," so should the employees of the White House.

HERBERT E. HARRIS II.

MINORITY VIEWS TO H.R. 8617

This legislation, referred to as the "Federal Employees' Political Activities Act of 1975," is, in effect, a repeal of the "Hatch Act."

It constitutes a power grab by Federal union leaders to place conscientious Federal employees at the mercy and calling of politicians at every level of political activity.

"HATCH ACT"—1939

The "Hatch Act" of 1939 resulted from the systematic manipulation of the Federal public service under the political aegis of the Democratic National Committee.

In 1939, the creation of the New Deal agencies had left nearly 40 percent of the Federal public service of some 850,000 employees open to political manipulation. The situation existed at the State level where thousands of State employees of emergency relief agencies were paid in full or part by Federal funds.

Spectacular evidence of patronage politics involving these offices during the 1936 and 1938 Congressional campaigns brought forth a cry of indignation from the public, and the Congress responded in passing legislation to provide for an impartial and efficient civil service—free from partisan political activity. This Act placed upon all employees the same restrictions which a series of other Presidents had formerly placed on competitive service employees alone.

PRACTICAL EFFECTS OF THE "HATCH ACT"

For 36 years, the "Hatch Act" has served the Federal Government and the public well. It is not a perfect document. It may need some amendments, but it has helped to protect employees by insulating them from pressures that might otherwise force them to engage in political activities not of their own choosing.

By banning certain partisan political activity, such as fund raising, political campaigning, and soliciting votes, the "Hatch Act" has successfully shielded the Federal employees against coercion from their supervisors.

Therefore, Federal employees, except for top appointed officials of the Federal Government, do not owe their appointments to any political party, and do not need to curry the favor of any political party to receive a promotion, assignment, or any other consideration in the Government.

Inherent in the "Hatch Act" is the belief that Federal employees cannot serve both an impartial civil service and a partisan political party or partisan activist group. The goals of both interests are incompatible.

SUPPORT FOR REPEAL OF THE "HATCH ACT"

Support for this legislation has come from some leaders of Federal employee unions affiliated with the AFL-CIO. It has not come from the rank and file Civil Service employees. Federal employee union bosses are determined that their members become more involved in political activity, a move which would substantially increase the influence of Federal and postal union top bosses over the Congress. They, in turn, would then be able to shower their considerable favors upon the political party and office holders who respond to their every legislative request, no matter the principle or cost.

This new found manpower resource would enable Federal employee union officers to brazenly ignore the Campaign Reform Act, which limits campaign expenditures.

Dr. Nathan Wolkomir, greatly respected President of the National Federation of Federal Employees, which opposes this legislation, charged that organized labor's interest in the bill "is nothing more than the old AFL-CIO pitch for muscle and power. It's a move for money and more organizing influence." We agree.

As late as 1967, the National Federation of Federal Employees sent out a questionnaire to its members on the issue of changes of the "Hatch Act." The results based on 30,000 returns, showed that 89 percent of the total expressed strong support for continuing the Act "as is." Only 1 percent of the total suggested that the Act be repealed.

It would be a grave mistake to believe that Federal employees are behind the move to repeal the "Hatch Act," because the record just does not show that.

Hearings produced no evidence that any but a small minority of Federal employees at any level of Government favor the repeal or emasculation of protections they enjoy under the "Hatch Act". This obviously shows that these employees are displaying better judgment than their so-called leaders, and we in the Congress should be listening to the employees rather than self-appointed bosses.

If this bill were to pass, the Federal Government's merit system would be the casualty to Federal employee labor grab for increased political muscle and power.

SAFEGUARDS WEAK

The Bill purports to provide for certain prohibitions against improper political activity, and for penalties to those who violate the law, but no penalty could relieve the pressure felt by ambitious employees to serve the political favorites of their supervisors in order to advance their own careers. Chairman Robert Hampton of the Civil Service Commission testified that "the only real deterrent against coercion is the removal of temptation through restrictions on political activities." There are few cases of coercion brought before the Commission because it is too difficult to prove such a charge.

Chairman Hampton further stated: "equally important with the concern that partisan political activity may detract from the impartiality of the performance of Government employees is the concern

that such activities, being observed by the public, will erode public confidence in the impartial administration of the Federal Government. The problem, of course, is that when the public sees a Federal employee who is prominently identified with partisan politics, and at the same time charged with responsibility for the impartial, non-partisan execution of public duties, it will inevitably have doubts about that employee's impartiality. It seems clear to me that anything which undermines the public's confidence in the impartiality and efficiency of the civil service should be of paramount concern to the Congress."

Illustrations of the potential problems which could be encountered are as follows:

1. Mr. Elliott Gray, Regional Commissioner of the Internal Revenue Service, testified that "agencies such as IRS and a few others have the power under the law to acquire information about individuals which can be highly valuable in advancing or defeating the interests of partisan political candidates." He continued, . . . "contact by such IRS employees with the public for political purposes, for themselves as candidates or for candidates they are supporting, should be equally forbidden. It would produce the same appearance of conflict of interest or potential abuse of position which now applies to forbidden selling, soliciting, or canvassing activities on behalf of a private agency, firm or business. I think the American people would lose confidence in the integrity of an Internal Revenue System which permitted its employees to be avid political partisans one day and expected them to be perceived the next as wholly non-partisan by both political friends and foes."

2. A census employee runs for political office in a geographical area for which he has responsibility. How does the legislation prevent the employee from using the knowledge he has acquired during his tenure? Where does the employee stop and the politician begin? How do you continue to convince the public that their responses to census questionnaires are held in the strictest confidence when the enumerator or another census employer is actively involved in partisan political activity contrary to the views of the respondent?

3. An FBI agent is assigned to investigate alleged illegal activities in a campaign in which he was actively involved. Must he remove himself from the case? If so, can the Government afford the expense and high level of unproductivity as a result of thousands of Federal employees removing themselves from sensitive positions because of potential conflicts of interest? It is unlikely that an FBI agent who is the chief fund raiser for a partisan political party would continue to be viewed by the public as an impartial, objective enforcer of our criminal code.

4. A non-partisan city manager, who also happens to control the purse strings for Federal grant funds, is urged to support a candidate for office. If he selects the wrong candidate, his city will suffer. He cannot afford to guess wrong. The real loser in this situation and similar ones is the public.

EMPLOYEE POLITICAL RIGHTS SHOULD BE MAINTAINED

The proponents of this bill would have us believe that Federal employees are "second-class citizens" because of the "Hatch Act." As a matter of fact, those who support this bill are determined to conscript Federal employees into political machines against their independent will.

Under the present law, Federal employees are, however, prohibited from engaging in the partisan political crafts of fund raising, working on behalf of a candidate or political party, and running for elective office, except in certain localities in the country. These restrictions are necessary, to not only protect the employee and the public, but to help to eliminate the emergence of boss politics in the Federal workforce.

The fact of the matter is Federal employees may exercise the same political rights exercised by more than a majority of the citizens in our country. For example, they may register and vote, make voluntary contributions to a political party, express private political opinions, attend as a spectator primary meetings, political meetings, political conventions, wear political badges and buttons, place political stickers on the bumpers of their automobiles, sign a nominating petition, and individually, or collectively, petition Congress or any Member thereof, or furnish information to Members of Congress and Congressional Committees.

POLITICAL MACHINES

The "freedom" guaranteed by this bill is the freedom to build partisan political machines within the Executive Branch, machines whose purpose will be to publicly cripple the Executive Branch on any controversial issue and thus eclipse the equality and separation of powers.

Imagine Federal employees openly campaigning against Presidential policies, anticipated vetoes or budget cuts. This bill is a political coup for union leaders and can only result in crippling the Executive Branch.

The very integrity of the Executive Branch requires that its career employees not divide along the lines of legislative debate.

RETURN OF POLITICS IN THE POSTAL SERVICE

The Postal Reorganization Act of 1970 removed politics from the Postal Service. It eliminated the appointment of postmasters by the political party in control of the White House, and in its stead made all appointments on the basis of merit.

This decision was applauded by the Congress, and the postal unions which for too long were subjected to this political football game every four years.

We are all aware of the political history of the Post Office Department. It is not an enviable past. No matter how any Member feels about the wisdom of passing the Postal Reorganization Act, we think it is generally agreed that the Congress was right to remove political influence from the Postal Service. To reintroduce politics into the Postal Service would be a giant step backwards.

PUBLIC CONFIDENCE CRISIS

There presently exists a crisis of public confidence in our government officials. This legislation if enacted would undermine and destroy the people's confidence in their system of government by returning Federal employment to the Jacksonian spoils system. It would cause Americans to question and examine any activity of the Federal Government for political motivations. The government must have the voluntary cooperation from its citizens in order to function on a day-to-day basis.

This point was made abundantly clear by a former regional director of the IRS when he suggested that this bill would mean the end of a voluntary system for the collection of taxes because every audit would be regarded as being politically instigated. Furthermore, it would severely hamper the investigative capability of all Federal law enforcement agencies which have been dependent to some extent on the voluntary cooperation of individuals in obtaining information regarding criminal activities.

Every reliable barometer of public opinion in the past several years has conclusively shown that elected public officials are held in the lowest possible esteem by the public. The public is equally concerned about the growing militancy of public unionism which has increased its membership by 151 percent from 1951 to 1972, payrolls by 596 percent, and strikes by public employees by 1000 percent. In this political climate, it is incredible that we in the Congress are being asked to approve what could become a new spoils system.

SUPREME COURT VIEW—LIMITED POLITICAL ACTIVITY

As recent as 1973, the U.S. Supreme Court, in its decision on the constitutionality of the Hatch Act stated, "Our judgment is that neither the first amendment nor any other provision of the Constitution invalidates a law . . . barring political conduct by federal employees." And repeal of the Act would run contrary to the judgment of history . . . that it is in the best interest of the country, indeed essential, that federal service should depend upon meritorious performance rather than political service, and that the political influence of federal employees on others and on the electoral process should be limited." And it has been, the opinion continues, "the judgment of Congress, the Executive and the country—that partisan political activities by federal employees must be limited if the Government is to operate effectively and fairly."

A NECESSARY LOOK ABROAD

Perhaps one should take a brief glimpse at the effects of union control on foreign nations. Italy, Great Britain and Argentina have allowed the unions to effectively destroy the economies of each of their respective countries. Great Britain has literally been brought to its knees in current labor negotiations with employees in the nationalized coal industry. Prime Minister Wilson has stated that the country will

be bankrupt if union demands are not tempered. It should be remembered that these employees are public employees. The members should have some recollection of the crippling Italian postal strike which resulted in the destruction of tons of mail. A recent Art Buchwald column suggested that the Italian Government should provide "dial-a-strike" service to its citizens. Citizens could call a number which would inform them of the strikes that would be effecting them that day. The Argentinian Government is currently in a power vacuum because of union pressures demanding the resignation of governmental cabinet officials which were acceded to rather than risk another revolution. The United States has been spared this union abuse of power by not allowing Federal employee unions to blackmail the Government into submission.

LEGISLATION ILL-TIMED, ILL-CONCEIVED

This legislation is ill-timed, ill-conceived, and is bad for the employees, the merit system as we know it to be, and the general public. It must be summarily rejected unless we are willing to forfeit an independent, impartial civil service for the imposition of politics at every level of activity in the Federal Government.

EDWARD J. DERWINSKI

SEPARATE VIEWS

The "Hatch Act" needs to be amended to make it more effective in protecting Federal employees from those who would coerce them into forced participation in partisan political favoritism in the delegation of their duties. The American people have a right to demand that their Government be fair and impartial in the conduct of its business. We are also interested in making certain that every Federal Employee will reasonably be able to participate in political activity providing that participation does not infringe on the rights of other employees and does not conflict with his public responsibilities.

We believe that the following sections of this legislation are sound and should be adopted:

1. The right to participate voluntarily in the political activities which are not expressly prohibited by law. However, we would hasten to add that in order to be truly *voluntary* a Federal employee must be protected from coercion from individuals outside the Federal service with the same perseverance that Federal employees are protected from those within Government.

2. The items below have been strictly prohibited only as to the conduct of Federal employees: 1) Use of official authority to influence another employee's vote; 2) coercion of a fellow employee to engage in political activity; 3) use of funds to influence Federal employees' vote; 4) contributions to supervisors or in Government buildings; and 5) political activity while on duty in Government buildings, or in uniform. We believe that these restrictions will effectively protect employees from the coercion of other Federal employees but only if they are aggressively enforced. We would also suggest that sections 7323 and 7324 be made applicable to all individuals who would attempt to influence or solicit Federal employees.

3. An independent board is established with the functions of adjudicating and imposing penalties for violations of the law including removal, suspension, or lesser penalties at the discretion of the Board. Witnesses at hearings requested that a broader range of alternatives should be included in the legislation in order that the punishment should fit the crime. Formerly, the employee was either dismissed or given thirty days suspension.

4. This legislation would provide employees with the right of judicial review of adverse decisions which are nonexistent under the "Hatch Act."

5. We believe that an aggressive educational program is essential to insure that all Federal employees will be informed in clear and explicit language of their rights and responsibilities under the Act. One of the major problems discovered in hearings was the lack of knowledge and misinformation as to what the Hatch Act prohibited or permitted. Over three thousand administrative rulings of the Civil Service Commission have confused the issue and in effect "chilled" the per-

missible forms of political expression under the Act. This amendment mandates that every Federal employee receive a letter each year at least 30 days prior to every Federal election.

The following provisions should be deleted or amended:

1. Section 7326 would allow a candidate for elective office to remain on the Federal payroll while campaigning. Under the wording, he must request that he be placed on a leave without pay basis. The witnesses before the subcommittee were almost unanimous in their support for mandatory leave without pay at a date certain before the election. We would suggest at least 30 but not more than 90 days prior to the election.

2. Section 7328 does not provide any time limitation on the CSC for the investigation of reports and allegations of prohibited activities. We would suggest that the CSC be given 60 days to investigate alleged violations or that they provide the Board with a written report containing specific reasons for the extension of time. Recent testimony has indicated that there are only 187 investigators for the CSC throughout the country and that these people are severely overworked with the over 16,000 complaints which are filed with the Commission each year. It should be clearly mandated that the CSC hire additional investigators to handle the increased workload and guarantee a prompt determination of the case. Justice delayed is justice denied.

An additional problem in this section is the sweeping grants of immunity from criminal prosecution in any court which are granted to those who would testify even at the defendant's request. Potentially, conspirators could testify at each others request in hearings and defeat more serious criminal prosecutions which are concurrently being conducted by the Justice Department. We would suggest that the Attorney General be consulted before any grant of immunity is given.

The bill, as passed out of the Committee, is an unfair burden on a career civil servant. It would mean that a conscientious Federal employee could be pressed into political action for survival. Let's maintain the goals of civil service and defeat this political bill.

JOHN H. ROUSSELOT.

JAMES M. COLLINS.

TRENT LOTT.

GENE TAYLOR.

BENJAMIN A. GILMAN.

ROBIN L. BEARD.

H.R. 8617, THE FEDERAL EMPLOYEES' POLITICAL ACTIVITIES ACT OF
1975 WITH AMENDMENTS AS REPORTED BY HOUSE COMMITTEE ON POST
OFFICE AND CIVIL SERVICE ON AUGUST 1, 1975

- *States that federal employees are encouraged to exercise their right of voluntary political participation.
- *Prohibits the use of official authority, influence, or coercion with the right to vote, not to vote or to otherwise engage in political activity.
- *Prohibits use of funds to influence votes; solicitation of political contributions by superior officials; and making political contributions in government rooms or buildings.
- *Prohibits political activity while on duty, in federal buildings, or in uniform.
- *Provides leave for candidates for elective office.
- *Authorizes the Civil Service Commission to investigate alleged violations of law.
- *Subjects violators of law to removal, suspension, or lesser penalties at the discretion of the Board.
- *Establishes an independent Board whose function is to adjudicate alleged violations of law and provide judicial review of adverse decisions.
- *Requires that the Civil Service Commission conduct a program for informing federal employees of their rights of political participation and report annually to the Congress on its implementation.

94TH CONGRESS
1ST SESSION

H. R. 8617

[Report No. 94-444]

IN THE HOUSE OF REPRESENTATIVES

JULY 14, 1975

Mr. CLAY (for himself, Mrs. SPELLMAN, Mr. SOLARZ, Mr. CHARLES H. WILSON of California, Mr. HARRIS, and Mrs. SCHIROEDER) introduced the following bill; which was referred to the Committee on Post Office and Civil Service

AUGUST 1, 1975

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Omit the part struck through and insert the part printed in italic]

A BILL

To restore to Federal civilian and Postal Service employees their rights to participate voluntarily, as private citizens, in the political processes of the Nation, to protect such employees from improper political solicitations, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled.*
3 That this Act may be cited as the "Federal Employees'
4 Political Activities Act of 1975".

- 5 SEC. 2. (a) Subchapter III of chapter 73 of title 5,
6 United States Code, is amended to read as follows:

I

1 “SUBCHAPTER III—POLITICAL ACTIVITIES

2 “§ 7321. Political participation

3 “It is the policy of the Congress that employees should
4 be encouraged to fully exercise, to the extent not expressly
5 prohibited by law, their rights of voluntary participation in
6 the political processes of our Nation.

7 “§ 7322. Definitions

8 “For the purpose of this subchapter—

9 “(1) ‘employee’ means any individual, including
10 the President and the Vice President, employed or
11 holding office in—

12 “(A) an Executive agency,

13 “(B) the government of the District of
14 Columbia,

15 “(C) the competitive service, or

16 “(D) the United States Postal Service or the
17 Postal Rate Commission;

18 but does not include a member of the uniformed services;

19 “(2) ‘candidate’ means any individual who seeks
20 nomination for election, or election, to any elective office,
21 whether or not such individual is elected, and, for the
22 purpose of this paragraph, an individual shall be deemed
23 to seek nomination for election, or election, to an elective
24 office, if such individual has—

1 “(A) taken the action required to qualify for
2 nomination for election, or election, or

3 “(B) received political contributions or made
4 expenditures, or has given consent for any other
5 person to receive political contributions or make ex-
6 penditures, with a view to bringing about such indi-
7 vidual's nomination for election, or election, to such
8 office;

9 “(3) ‘political contribution’—

10 “(A) means a gift, subscription, loan, advance,
11 or deposit of money or anything of value, made for
12 the purpose of influencing the nomination for elec-
13 tion, or election, of any individual to elective office
14 or for the purpose of otherwise influencing the re-
15 sults of any election;

16 “(B) includes a contract, promise, or agree-
17 ment, express or implied, whether or not legally
18 enforceable, to make a political contribution for any
19 such purpose; and

20 “(C) includes the payment by any person,
21 other than a candidate or a political organization,
22 of compensation for the personal services of another
23 person which are rendered to such candidate or po-

1 litical organization without charge for any such
2 purpose;

3 “(4) ‘superior’ means an employee (other than the
4 President or the Vice President) who exercises super-
5 vision of, or control or administrative direction over,
6 another employee;

7 “(5) ‘elective office’ means any elective public of-
8 fice and any elective office of any political party or
9 affiliated organization; and

10 “(6) ‘Board’ means the Board on Political Activi-
11 ties of Federal Employees established under section 7327
12 of this title.

13 **“§ 7323. Use of official authority or influence; prohibition**

14 “(a) An employee may not directly or indirectly use
15 or attempt to use the official authority or influence of such
16 employee for the purpose of—

17 “(1) interfering with or affecting the result of any
18 election; or

19 “(2) intimidating, threatening, coercing, command-
20 ing, influencing, or attempting to intimidate, threaten,
21 coerce, command, or influence—

22 “(A) any individual for the purpose of inter-
23 fering with the right of any individual to vote as
24 such individual may choose, or of causing any indi-

1 vidual to vote, or not to vote, for any candidate or
2 measure *in any election*;

3 “(B) any person to give or withhold any politi-
4 cal contribution; or

5 “(C) any person to engage, or not to engage,
6 in any form of political activity whether or not such
7 activity is prohibited by law.

8 “(b) For ~~purposes~~ *the purpose* of subsection (a) of this
9 section, ‘use of official authority or influence’ includes, but
10 is not limited to, promising to confer or conferring any bene-
11 fit (such as appointment, promotion, compensation, grant,
12 contract, license, or ruling), or effecting or threatening to
13 effect any reprisal (such as deprivation of appointment, pro-
14 motion, compensation, grant, contract, license, or ruling).

15 **“§ 7324. Solicitation; prohibition**

16 “An employee may not—

17 “(1) give or offer to give a political contribution
18 to any individual either to vote or refrain from voting,
19 or to vote for or against any candidate or measure, in
20 any election;

21 “(2) solicit, accept, or receive a political contribu-
22 tion to vote or refrain from voting, or to vote for or
23 against any candidate or measure, in any election;

1 “(3) knowingly give or hand over a political con-
2 tribution to a superior of such employee; or

3 (4) knowingly solicit, accept, or receive, or be in
4 any manner concerned with soliciting, accepting, or
5 receiving, a political contribution—

6 “(A) from another employee (or a member
7 of another employee’s immediate family) with re-
8 spect to whom such employee is a superior; or

9 “(B) in any room or building occupied in the
10 discharge of official duties by—

11 “(i) an individual employed or holding
12 office in the Government of the United States, in
13 the government of the District of Columbia,
14 or in any agency or instrumentality of the
15 foregoing; or

16 “(ii) an individual receiving any salary or
17 compensation for services from money derived
18 from the Treasury of the United States.

19 **“§ 7325. Political activities on duty, etc.; prohibition**

20 “(a) An employee may not engage in political activity—

21 “(1) while such employee is on duty,

22 “(2) in any room or building occupied in the dis-
23 charge of official duties by an individual employed or
24 holding office in the Government of the United States,

1 in the government of the District of Columbia, or in
 2 any agency or instrumentality of the foregoing, or
 3 “(3) while wearing a uniform or official insignia
 4 identifying the office or position of such employee.

5 “(b) *The provisions of subsection (a) of this section*
 6 *shall not apply to—*

7 “(1) *the President and the Vice President; or*

8 “(2) *an individual—*

9 “(A) *paid from the appropriation for the White*
 10 *House Office,*

11 “(B) *paid from funds to enable the Vice Presi-*
 12 *dent to provide assistance to the President, or*

13 “(C) *on special assignment to the White House*
 14 *Office,*

15 *unless such individual holds a career or career-condi-*
 16 *tional appointment in the competitive service.*

17 **§ 7326. Leave for candidates for elective office**

18 “(a) An employee who is a candidate for elective
 19 office shall, upon the request of such employee, be granted
 20 leave without pay for the purpose of allowing such employee
 21 to engage in activities relating to such candidacy.

22 “(b) Notwithstanding section 6302 (d) of this title,
 23 an employee who is a candidate for elective office shall, upon
 24 the request of such employee, be granted accrued annual

1 leave for the purpose of allowing such employee to engage
 2 in activities relating to such candidacy. Such leave shall be
 3 in addition to leave without pay to which such employee may
 4 be entitled under subsection (a) of this section.

5 **“§ 7327. Board on Political Activities of Federal Employees**

6 “(a) There is established a board to be known as the
 7 Board on Political Activities of Federal Employees. It shall
 8 be the function of the Board to hear and decide cases regard-
 9 ing violations of ~~section~~ sections 7323, ~~8324~~, 7324, and
 10 7325 of this title.

11 “(b) The Board shall be composed of 3 members—

12 “(1) one member of which shall be appointed, with
 13 the confirmation of a majority of both Houses of the
 14 Congress, by the President and who shall serve as Chair-
 15 man of the Board;

16 “(2) one member of which shall be appointed, with
 17 the confirmation of a majority of both Houses of the
 18 Congress, by the Speaker of the House of Representa-
 19 tives, after consultation with the majority leader of the
 20 House and the minority leader of the House; and

21 “(3) one member of which shall be appointed, with
 22 the confirmation of a majority of both ~~House~~ Houses
 23 of the Congress, by the President pro tempore of the
 24 Senate, after consultation with the majority leader of the
 25 Senate and the minority leader of the Senate.

1 “(c) Members of the Board shall be chosen on the basis
2 of their professional qualifications from among individuals
3 who, at the time of their appointment, are employees (as
4 defined under section 7322 (1) of this title).

5 “(d) (1) Members of the Board shall serve a term of
6 3 years, except that of the members first appointed—

7 “(A) the Chairman shall be appointed for a term
8 of 3 years,

9 “(B) the member appointed under subsection (b)
10 (2) of this section shall be appointed for a term of 2
11 years, and

12 “(C) the member appointed under subsection (b)
13 (3) of this section shall be appointed for a term of 1
14 year.

15 An individual appointed to fill a vacancy occurring other
16 than by the expiration of a term of office shall be appointed
17 only for the unexpired term of the member such individual
18 will succeed. Any vacancy occurring in the membership of
19 the Board shall be filled in the same manner as in the case
20 of the original appointment.

21 “(2) If an employee who was appointed as a member
22 of the Board is separated from service as an employee he
23 may not continue as a member of the Board after the 60-
24 day period beginning on the date so separated.

25 “(e) The Board shall meet at the call of the Chairman.

1 “(f) All decisions of the Board with respect to the
2 exercise of its duties and powers under the provisions of this
3 subchapter shall be made by a majority vote of the Board.

4 “(g) A member of the Board may not delegate to any
5 person his vote nor, except as expressly provided by this
6 subchapter, may any decisionmaking authority vested in the
7 Board by the provisions of this subchapter be delegated to
8 any member or person.

9 “(h) The Board shall prepare and publish in the Fed-
10 eral Register written rules for the conduct of its activities,
11 shall have an official seal which shall be judicially noticed,
12 and shall have its office in or near the District of Columbia
13 (but it may meet or exercise any of its powers anywhere
14 in the United States).

15 “(i) The Civil Service Commission shall provide such
16 clerical and professional personnel, and administrative sup-
17 port, as the Chairman of the Board considers appropriate
18 and necessary to carry out the Board’s functions under this
19 subchapter. Such personnel shall be responsible to the Chair-
20 man of the Board.

21 “(j) The Administrator of the General Services Ad-
22 ministration shall furnish the Board suitable office space ap-
23 propriately furnished and equipped, as determined by the
24 Administrator.

1 “(k) (1) Members of the Board shall receive no addi-
2 tional pay on account of their service on the Board.

3 “(2) Members shall be entitled to leave without loss of
4 or reduction in pay, leave, or performance or efficiency rating
5 during a period of absence while in the actual performance
6 of duties vested in the Board.

7 **“§ 7328. Investigation; procedures; hearing**

8 “(a) The Civil Service Commission shall investigate
9 reports and allegations of any activity prohibited by section
10 7323, 7324, or 7325 of this title.

11 “(b) As a part of the investigation of the activities of an
12 employee, the Commission shall provide such employee an
13 opportunity to make a statement concerning the matters
14 under investigation and to support such statement with any
15 documents the employee wishes to submit. An employee of
16 the Commission lawfully assigned to investigate a violation of
17 this subchapter may administer an oath to a witness attend-
18 ing to testify or depose in the course of the investigation.

19 “(c) (1) If it appears to the Commission after investi-
20 gation that a violation of section 7323, 7324, or 7325 of this
21 title has not occurred, it shall so notify the employee and the
22 agency in which the employee is employed.

23 “(2) Except as provided in paragraph (3) of this sub-
24 section, if it appears to the Commission after investigation

1 that a violation of section 7323, 7324, or 7325 of this title
 2 has occurred, the Commission shall submit to the Board and
 3 serve upon the employee a notice by certified mail, return
 4 receipt requested (or if notice cannot be served in such man-
 5 ner, then by any method calculated to reasonably apprise
 6 the employee) —

7 “(A) setting forth specifically and in detail the
 8 charges of alleged prohibited activity;

9 “(B) advising the employee of the penalties pro-
 10 vided under section 7329 of this title;

11 “(C) ~~affording~~ *specifying* a period of not less than
 12 30 days within which the employee may file with the
 13 Board a written answer to the charges in the manner
 14 prescribed by rules issued by the Board; and

15 “(D) advising the employee that unless the em-
 16 ployee answers the charges, in writing, within the time
 17 allowed therefor, the Board is authorized to treat such
 18 failure as an admission by the employee of the charges
 19 set forth in the notice and a waiver by the employee of
 20 the right to a hearing on the charges.

21 “(3) If it appears to the Commission after investiga-
 22 tion that a violation of section 7323, 7324, or 7325 of this
 23 title has been committed by—

24 “(A) the Vice President;

1 “(B) an employee appointed by the President by
2 and with the advice and consent of the Senate;

3 “(C) an employee whose appointment is expressly
4 required by statute to be made by the President;

5 “(D) the Mayor of the District of Columbia; or

6 “(E) the Chairman or a member of the Council of
7 the District of Columbia, as established by the District of
8 Columbia Self-Government and Governmental Reor-
9 ganization Act;

10 the Commission shall refer the case to the Attorney General
11 for prosecution under title 18, and shall report the nature and
12 details of the violation to the President and to the Con-
13 gress.

14 “(d) (1) If a written answer is not duly filed within
15 the time allowed therefor, the Board may, without further
16 proceedings, issue its final decision and order.

17 “(2) If an answer is duly filed, the charges shall be
18 determined by the Board on the record after a hearing
19 conducted by a hearing examiner appointed under section
20 3105 of this title, and, except as otherwise expressly pro-
21 vided under this subchapter, in accordance with the require-
22 ments of subchapter II of chapter 5 of this title, notwith-
23 standing any exception therein for matters involving the
24 tenure of an employee. The hearing shall be commenced

1 within 30 days after the answer is filed with the Board
2 and shall be conducted without unreasonable delay. As soon
3 as practicable after the conclusion of the hearing, the exam-
4 iner shall serve upon the Board, the Commission, and the
5 employee such examiner's recommended decision with notice
6 to the Commission and the employee of opportunity to file
7 with the Board, within 30 days after the date of such notice,
8 exceptions to the recommended decision. The Board shall
9 issue its final decision and order in the proceeding no later
10 than 60 days after the date the recommended decision is
11 served. The employee shall not be removed from active duty
12 status by reason of the alleged violation of this subchapter
13 at any time before the effective date specified by the Board

14 “(e) (1) At any stage of a proceeding or investigation
15 under this subchapter, the Board may, at the written request
16 of the Commission or the employee, require by subpoena the
17 attendance and testimony of witnesses and the production
18 of documentary or other evidence relating to the proceeding
19 or investigation at any designated place, from any place in
20 the United States or any territory or possession thereof, the
21 Commonwealth of Puerto Rico, or the District of Columbia.
22 Any member of the Board may issue subpoenas and members
23 of the Board and any hearing examiner authorized by the
24 Board may administer oaths, examine witnesses, and receive
25 evidence. In the case of contumacy or failure to obey a sub-

pena, the United States district court for the judicial district in which the person to whom the subpoena is addressed resides or is served may, upon application by the Board, issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

“(2) The Board (or a member designated by the Board) may order the taking of depositions at any stage of a proceeding or investigation under this subchapter. Depositions shall be taken before an individual designated by the Board and having the power to administer oaths. Testimony shall be reduced to writing by or under the direction of the individual taking the deposition and shall be subscribed by the deponent.

“(3) An employee may not be excused from attending and testifying or from producing documentary or other evidence in obedience to a subpoena of the Board on the ground that the testimony or evidence required of the employee may tend to incriminate the employee or subject the employee to a penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the employee is compelled to testify or produce evidence. No employee shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing con-

cerning which the employee is compelled, after having
claimed the privilege against self-incrimination, to testify
or produce evidence, nor shall testimony or evidence so com-
pelled be used as evidence in any criminal proceeding against
the employee in any court, except that no employee shall
be exempt from prosecution and punishment for perjury
committed in so testifying.

“(f) An employee upon whom a penalty is imposed
by an order of the Board under subsection (d) of this section
may, within 30 days after the date on which the order was
issued, institute an action for judicial review of the Board’s
order in the United States District Court for the District of
Columbia or in the United States district court for the judicial
district in which the employee resides or is employed. The
institution of an action for judicial review shall not operate
as a stay of the Board’s order, unless the court specifically
orders such stay. A copy of the summons and complaint
shall be served as otherwise prescribed by law and, in
addition, upon the Board. Thereupon the Board shall certify
and file with the court the record upon which the Board’s
order was based. If application is made to the court for
leave to adduce additional evidence, and it is shown to the
satisfaction of the court that the additional evidence may
materially affect the result of the proceeding and that there
were reasonable grounds for failure to adduce the evidence

1 at the hearing conducted under subsection (d) (2) of this
2 section, the court may direct that the additional evidence be
3 taken before the Board in the manner and on the terms and
4 conditions fixed by the court. The Board may modify its
5 findings of fact or order, in the light of the additional evi-
6 dence, and shall file with the court such modified findings or
7 order. The Board's findings of fact, if supported by substan-
8 tial evidence, shall be conclusive. The court shall affirm the
9 Board's order if it determines that it is in accordance with
10 law. If the court determines that the order is not in ac-
11 cordance with law—

12 “(1) it shall remand the proceeding to the Board
13 with directions either to enter an order determined by
14 the court to be lawful or to take such further proceedings
15 as, in the opinion of the court, are required; and

16 “(2) it may assess against the United States rea-
17 sonable attorney fees and other litigation costs reason-
18 ably incurred by the employee.

19 “(g) The Commission or the Board, in its discretion,
20 may proceed with any investigation or proceeding instituted
21 under this subchapter notwithstanding that the Commission
22 or the head of an employing agency or department has re-
23 ported the alleged violation to the Attorney General as re-
24 quired by section 535 of title 28.

1 **“§ 7329. Penalties**

2 “(a) Subject to and in accordance with section 7328
3 of this title, an employee who is found to have violated
4 any provision of section 7323, 7324, or 7325 of this title
5 shall, upon a final order of the Board, be—

6 “(1) removed from such employee’s position, in
7 which event that employee may not thereafter hold any
8 position (other than an elected position) as an em-
9 ployee (as defined in section 7322 (1) of this title) for
10 such period as the Board may prescribe;

11 “(2) suspended without pay from such employee’s
12 position for such period as the Board may prescribe; or

13 “(3) disciplined in such other manner as the Board
14 shall deem appropriate.

15 “(b) The Board shall notify the Commission, the em-
16 ployee, and the employing agency of any penalty it has
17 imposed under this section. The employing agency shall
18 certify to the Board the measures undertaken to implement
19 the penalty.

20 **“§ 7330. ~~Education~~ Educational program; reports**

21 “(a) The Commission shall establish and conduct a
22 continuing program to inform all employees of their rights
23 of political participation and to educate employees with
24 respect to those political activities which are prohibited.
25 *The Commission shall inform each employee individually*

1 *in writing, at least once each calendar year, of such em-*
 2 *ployee's political rights and of the restrictions under this*
 3 *subchapter. The Commission may determine, for each State,*
 4 *the most appropriate date for providing information required*
 5 *by this subsection. Such information, however, shall be pro-*
 6 *vided to employees employed or holding office in any State*
 7 *not later than 60 days before the earliest primary or gen-*
 8 *eral election for State or Federal elective office held in such*
 9 *State.*

10 “(b) On or before March 30 of each calendar year, the
 11 Commission shall submit a report covering the preceding
 12 calendar year to the Speaker of the House of Representa-
 13 tives and the President pro tempore of the Senate for referral
 14 to the appropriate committees of the Congress. The report
 15 shall include—

16 “(1) the number of investigations conducted under
 17 section 7328 of this title and the results of such investi-
 18 gations;

19 “(2) the name and position or title of each individ-
 20 ual involved, and the funds expended by the Commis-
 21 sion, in carrying out the program required under subsec-
 22 tion (a) of this section; and

23 “(3) an evaluation which describes—

24 “(A) the manner in which such program is
 25 being carried out; and

1 “(B) the effectiveness of such program in
2 carrying out the purposes set forth in subsection
3 (a) of this section.

4 **“§ 7331. Regulations**

5 “The Civil Service Commission shall prescribe such
6 rules and regulations as may be necessary to carry out its
7 responsibilities under this subchapter.”.

8 (b) (1) Sections 8332 (k) (1), 8706 (e), and 8906
9 (e) (2) of title 5, United States Code, are each amended
10 by inserting immediately after “who enters on” the follow-
11 ing: “leave without pay granted under section 7326 (a)
12 of this title, or who enters on”.

13 (2) Section 3302 of title 5, United States Code, is
14 amended by striking out “7153, 7321, and 7322” and in-
15 serting in lieu thereof “and 7153”.

16 (3) Section 1308 (a) of title 5, United States Code,
17 is amended—

18 (A) by inserting “and” at the end of paragraph

19 (2) ;

20 (B) by striking out paragraph (3) ; and

21 (C) by redesignating paragraph (4) as paragraph

22 (3)

23 (4) The second sentence of section 8332 (k) (1) of title
24 5, United States Code, is amended by striking out “second”
25 and inserting “last” in lieu thereof.

1 (5) The section analysis for subchapter III of chapter
2 73 of title 5, United States Code, is amended to read as
3 follows:

“SUBCHAPTER III—POLITICAL ACTIVITIES

“Sec.

“7321. Political participation.

“7322. Definitions.

“7323. Use of official authority or influence; prohibition.

“7324. Solicitation; prohibition.

“7325. Political activities on duty, etc.; prohibition.

“7326. Leave for candidates for elective office.

“7327. Board on Political Activities of Federal Employees.

“7328. Investigation; procedures; hearing.

“7329. Penalties.

“7330. ~~Education~~ *Educational* program; reports.

“7331. Regulations.”.

4 (c) Sections 602 and 607 of title 18, United States
5 Code, relating to solicitations and making of political con-
6 tributions, are each amended by adding at the end thereof the
7 following new sentence: “This section does not apply to any
8 activity of an employee, as defined in section 7322(1) of
9 title 5, unless such activity is prohibited by section 7324 of
10 that title.”.

11 (d) Section 6 of the Voting Rights Act of 1965 (42
12 U.S.C. 1973d) is amended by striking out “the provisions of
13 section 9 of the Act of August 2, 1939, as amended (5
14 U.S.C. 118i), prohibiting partisan political activity” and by
15 inserting in lieu thereof “the provisions of subchapter III
16 of chapter 73 of title 5, United States Code, relating to
17 political activities”.

1 (e) Sections 103 (a) (4) (D) and 203 (a) (4) (D) of
2 the District of Columbia Public Education Act are each
3 amended by striking out "sections 7324 through 7327 of
4 title 5" and inserting in lieu thereof "section 7325 of title 5".

5 (f) The amendments made by this section shall take
6 effect on the ninetieth day after the date of the enactment
7 of this Act.

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FEDERAL EMPLOYEES' POLITICAL ACTIVITIES ACT OF 1975

Mr. MOAKLEY. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 731 and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 731

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 8617) to restore to Federal civilian and Postal Service employees their rights to participate voluntarily, as private citizens, in the political processes of the Nation, to protect such employees from improper political solicitations, and for other purposes. After general debate, which shall be confined to the bill and shall continue not to exceed two hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Post Office and Civil Service, the bill shall be read for amendment under the five-minute rule. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

The SPEAKER. The gentleman from Massachusetts (Mr. MOAKLEY) is recognized for 1 hour.

Mr. MOAKLEY. Mr. Speaker, I yield 30 minutes to the gentleman from Mississippi (Mr. LOTT), pending which I yield myself such time as I may consume.

(Mr. MOAKLEY asked and was given

permission to revise and extend his remarks.)

Mr. MOAKLEY. Mr. Speaker, House Resolution 731 makes in order consideration of H.R. 8617, a bill to restore to Federal civilian and Postal Service employees their rights to participate voluntarily, as private citizens, in the political processes of the Nation, to protect such employees from improper political solicitations, and for other purposes.

There are a wide range of opinions on this legislation and the Committee on Rules has, therefore, recommended a 2-hour open rule. It contains no waivers and fully protects the rights of all Members to offer amendments.

Mr. Speaker, H.R. 8617 represents a major reform for all employees of the Federal Government and for our entire political system. As Mr. William McClenen, president of the Public Employees Department of the AFL-CIO, has noted, this legislation will restore full citizenship to Federal civil service employees and employees of the Postal Service. Commenting on the need for this legislation, Mr. McClenen explained:

Our experience is that public employees generally, and federal civil service and Postal Service employees in particular, are effectively denied the rights enjoyed by other citizens to take part fully in America's democratic political process.

This legislation will enable Federal employees to regain their citizenship. There is no place, in contemporary America, for two classes of citizens. We can no longer tell millions of Americans that they must exchange their most fundamental rights for a job.

This bill is the result of close and careful scrutiny by the Subcommittee on Employee Political Rights and Intergovernmental Programs, chaired by our distinguished colleague from Missouri (Mr. CLAY) and by the full Committee on Post Office and Civil Service, chaired by the distinguished gentleman from North Carolina (Mr. HENDERSON).

During consideration, testimony was taken from 100 witnesses, in hearings held around the country, over a 3-month period. The subcommittee and the full committee subsequently reported the legislation before us by voice votes.

This should be viewed in stark contrast to the original passage of the Hatch Act in 1939, which was pushed through Congress with little thought or discussion. It was an understandable, but somewhat precipitous response to the abuses which existed in the Federal service at that time.

Mr. Speaker, today's civil service bears almost no relation to the situation a generation ago which produced the Hatch Act. It is now necessary for us to reexamine that measure in light of today's conditions. The 89th Congress, with this objective in mind, created the Commission on Political Activity of Government Personnel which submitted a report to Congress. In its report, the Commission found the act, by contemporary standards, "confusing, ambiguous, restrictive, negative in character, and possibly unconstitutional."

This is the act that opponents of H.R. 8617 are asking us to ride with a while longer.

I can understand the concerns of those who oppose this legislation, but I do not feel there is adequate ground for opposing this measure.

While enabling Federal employees to engage in political activity, it actually strengthens the protection afforded to the public against conflicts of interest and to the civil service against coercion.

Mr. Speaker, H.R. 8617 represents a major, and too long delayed, reform. The resolution before us will permit the kind of full and open discussion which such legislation deserves. Accordingly I urge adoption of the rule.

Mr. LOTT. Mr. Speaker, I yield myself such time as I may consume.

(Mr. LOTT asked and was given permission to revise and extend his remarks.)

Mr. LOTT. Mr. Speaker, as the gentleman from Massachusetts has stated, this rule, House Resolution 731, provides for the House to resolve itself into the Committee of the Whole for consideration of H.R. 8617, the Federal Employees' Po-

litical Activities Act of 1975. The rule allows 2 hours of general debate, and the bill will be read for amendment under the 5-minute rule.

H.R. 8617 seeks to amend the Hatch Act by permitting Federal civilian and postal employees to exercise their right of voluntary political participation. It prohibits the use of funds to influence votes, the misuses of official authority of coercion, the solicitation of political contributions by superior officials, and the making of political contributions in Government rooms or buildings. Political activity while on duty, in Federal buildings, or in uniform is prohibited.

The bill would authorize leave for candidates for political office but would not require that a Federal employee take a mandatory leave without pay. An independent Board on Political Activities of Federal Employees is established under the measure to hear and adjudicate alleged violations of the law. Finally, the Civil Service Commission is directed to conduct a program for advising Federal employees of their rights of political participation.

There is no question but what the Hatch Act is in great need of revision. Federal employees have been the victim of an ambiguously drafted law that has in some instances not protected them from those who would coerce them into forced participation in partisan political favoritism. At the same time, however, I believe it is of equal importance that every Federal employee be able to participate reasonably in political activity provided that his involvement therein does not infringe on the rights of other employees and does not conflict with his public responsibilities.

The main problem that this bill, as reported, fosters is the section which would allow a candidate for elective office to remain on the Federal payroll while campaigning. Under the bill's current language a campaigning Federal employee shall upon request be granted accrued annual leave or leave without pay during the campaign period. The employee is not required to request or to take this leave. This is wrong, in my opinion, because it would tend to create many more questionable situations than it would resolve.

Mr. Speaker, I am sure of other objections to the passage of this legislation, as passed out of the committee. It is fortunate that this rule provides for 2 hours of debate and that the bill is open to all germane amendments. I would hope, therefore, that strengthening and correcting amendments will be offered before this House takes final action on

the bill.

Mr. ROUSSELOT. Mr. Speaker, will the gentleman yield?

Mr. LOTT. I yield to the gentleman from California.

Mr. ROUSSELOT. Mr. Speaker, the gentleman from Massachusetts in his opening statement, and I think we should make sure this is fully understood, implies that Federal workers presently have no political rights which, of course, is not true.

It is true that with Federal employees there are certain restrictions on their political activities; but to imply that there are little or no rights is, of course, not true.

I think we should make the record clear that this is an attempt to free up some of the prohibitions that have been placed on Federal workers in political activities, but it should not be left in hazy doubt that somehow they have no right to engage in political activities.

Mr. MOAKLEY. Mr. Speaker, will the gentleman yield?

Mr. LOTT. I yield to the gentleman from Massachusetts.

Mr. MOAKLEY. Mr. Speaker, I completely agree with the gentleman from California. I meant this would free up some of the prohibitions that Federal employees have been under since 1939.

Mr. ROUSSELOT. I appreciate my colleague's comment.

(Mr. ROUSSELOT asked and was given permission to revise and extend his remarks.)

Mr. LOTT. Mr. Speaker, I have no further requests for time. I urge adoption of the rule.

Mr. MOAKLEY. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

Mr. CLAY. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 8617) to restore to Federal civilian and Postal Service employees their rights to participate voluntarily, as private citizens, in the political processes of the Nation, to protect such employees from improper political solicitations, and for other purposes.

The SPEAKER. The question is on the motion offered by the gentleman from Missouri (Mr. CLAY).

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House

on the State of the Union for the consideration of the bill H.R. 8617, with Mr. FOLEY in the chair.

The Clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispensed with.

The CHAIRMAN. Under the rule, the gentleman from Missouri (Mr. CLAY) will be recognized for 1 hour, and the gentleman from Illinois (Mr. DERWINSKI) will be recognized for 1 hour.

The Chair now recognizes the gentleman from Missouri (Mr. CLAY).

Mr. CLAY. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, H.R. 8617, the Federal Employees' Political Activities Act of 1975, updates and modifies the Hatch Act. It permits Federal civilian and postal employees the right to participate voluntarily in political activities so long as those activities do not ever appear to compromise the integrity of the merit system or the impartial administration of the functions of Government.

The Hatch Act was precipitously enacted in 1939 with no public hearings and limited debate. It was an overreaction by the Congress to abuses, not of voluntary political activity, but to coercion and kickbacks by employees and recipients in Federal relief programs.

Previous studies by the Congress had revealed not even the suggestion of any wrong doing in Federal employees participating in political activity voluntarily and on their own time. The Hatch Act, well-intended as it was, was enacted in a period during which the Congress was deeply concerned about the growth in the power and influence wielded by then-President Franklin Roosevelt.

But the times and conditions have changed since 1939 and the committee has taken notice of these realities. In 1939, Federal programs to provide direct aid to the poor were being expanded, while today they are being contracted. In 1939, only 32 percent of the Federal work force of 950,000 was under the merit system, in contrast to almost 70 percent of the current work force of 2.8 million. Third, the need for skilled personnel has increased to the point where the patronage system no longer flourishes as it did in the 1930's. Finally, the growing strength and influence of the Civil Service Commission has led to the institutionalization of the merit system. I find it difficult to believe that the authors of the Hatch Act ever intended that 2.8 million Federal employees would be denied the same opportunity to fully participate in the political process that is available to all other citizens of this Nation.

Prohibiting voluntary, off duty political activity of Government employees is very serious business. It flies in the face of the guarantees of the first amendment. When we attempt to prohibit or regulate these activities, we deny free speech and free association. For this body or any other body of government to do that, there must be a compelling interest and overwhelming justification.

Those who protect and defend the present Hatch Act are deeply concerned that a value system of merit, impartiality, and integrity not be destroyed. Those of us who recommend change in the Hatch Act share the concern that those values not be tampered with or otherwise eroded.

There are approximately six major concerns that opponents of this measure articulate as essential to preserving the integrity and protection of our merit system. Those who support this legislation point to those same concerns as the justification for revising the Hatch Act.

First, that Federal employees ought to be extended all the rights and benefits of citizenship as any other person within the framework of prudence and possibility. Second, those rights and benefits ought to be made known to the recipients. Third, the administration of our laws must be impartial—free from any partisan considerations in the interpretation of those laws. Fourth, equally as important is the appearance of impartiality. The public in general must perceive the administration of laws as impartial. Fifth, the Federal Civil Service System must not be used as a patronage system to serve the political interests of any political party. And sixth, Government employees must not be subjected to undesirable pressures to participate in political activities because of fear or coercion.

These were the major concerns confronting our committee as we launched a course to write legislation which protected the rights and responsibilities of 2.8 million Federal employees, did not infringe upon the first amendment rights of those employees, and took notice of an impartially administered Government.

Mr. Chairman, the Subcommittee on Employee Political Rights and Intergovernmental Programs considered the originally introduced bill, H.R. 3000, in a calm, dispassionate manner. It conducted 11 days of hearings and received testimony from over 100 witnesses. From these hearings evolved an improved, more comprehensive clean bill—one which differentiates between voluntary and involuntary political activities. This bill protects the public interest while

providing Federal employees with greater freedom to participate in the political process.

In summary, the bill provides the following:

States that Federal employees are encouraged to exercise their right of voluntary political participation.

Prohibits the use of official authority, influence, or coercion with the right to vote, not to vote, or to otherwise engage in political activity.

Prohibits use of funds to influence votes; solicitation of political contributions by superior officials; and making political contributions in Government rooms or buildings.

Prohibits political activity while on duty, in Federal buildings or in uniform.

Provides leave for candidates for elective office.

Authorizes the Civil Service Commission to investigate alleged violations of law.

Subjects violators of law to removal, suspension, or lesser penalties at the discretion of the Board.

Establishes an independent board whose function is to adjudicate alleged violations of law and provide judicial review of adverse decisions.

Requires that the Civil Service Commission conduct a program for informing Federal employees of their rights of political participation and report annually to the Congress on its implementation.

Mr. Chairman, I wish to commend the members of the subcommittee—Mrs. SPELLMAN, Mr. SOLARZ, Mr. CHARLES H. WILSON of California, Mr. HARRIS, Mrs. SCHROEDER, Mr. GILMAN, and Mr. ROUSELOT. Their mandate was a difficult one. But because of their interest and dedication, we have developed a piece of legislation which preserves all the protections enumerated by both opponents and supporters of the bill and, at the same time, we have abolished all the impediments to the rights of the first amendment which formerly existed.

H.R. 8617 adds to and strengthens those meritorious features of the Hatch Act by providing employees and the public with greater protection against any recurrence of the spoils system. It updates those parts of the Hatch Act which are no longer applicable by permitting those voluntary, off duty political activities which do not conclusively interfere with the impartial administration of effective public service.

The bill has been carefully drawn to meet the concerns of its supporters and opponents alike. It deserves your support.

Mr. GILMAN. Mr. Chairman, will the gentleman yield?

Mr. CLAY. I yield to the gentleman from New York.

Mr. GILMAN. I thank the gentleman for yielding.

I congratulate the chairman for his persistent and diligent efforts in helping in the draftsmanship, conducting the hearings, and bringing this measure to the floor.

Mr. CLAY. I thank the gentleman.

Mr. GILMAN. Mr. Chairman, among the purposes that the gentleman has set forth in his committee's report, is to try to consolidate some of the numerous decisions that have been made over the past few decades, to try to consolidate some 3,000 administrative determinations and to try to spell out more clearly just what a Federal employee can do and what he cannot do under the Hatch Act.

However, I note, in reviewing the definitions under the proposed statute, that nowhere is there a definition of the term "political activity," the measure does not specify the parameters for political activity, or what an employee is entitled to do and what is prohibited.

Since this measure seems to restructure and reform the Hatch Act, where does the employee now look for a definition of what is political activity? For what he will be permitted to do and what he is not permitted to do?

Mr. CLAY. I would say that in the report we made it crystal clear that we were abolishing all of the restrictions, all of the impediments against public employees' participation in politics which do not conflict with the public interest. There is no definition for any citizen of the United States who is not a Federal employee as to what constitutes political activity. We did not want to define what parameters a Federal employee could participate in, with the exception of those specific limitations that have been enumerated in the bill. Other than that, it would be my opinion that he would be free to participate in any legitimate form of political activity.

Mr. GILMAN. Mr. Chairman, if the gentleman will yield further, at line 6 on page 5 of the bill, in prohibiting the use of official authority to influence, there is a reference to the term, "political activity." It states: "(c) any person to engage, or not to engage, in any form of political activity whether or not such activity is prohibited by law."

And then in other portions of the bill there are other references to the term, "political activity."

What I am concerned about is this: Since among the purposes of this bill is to establish some clear definition of what

an employee can and cannot do and we refer to the broad term of "political activity," as being in the subject for prohibition, where in this measure do we specify just what that "political activity" is that is being prohibited.

Mr. CLAY. Mr. Chairman, we have enumerated the prohibitions through the bill.

For instance, one may not engage in political activity while on duty, while on Government property, or while in uniform. A superior may not solicit funds from a subordinate or from a member of a subordinate's family. One may not do a number of things, and these things are listed there.

There must be 50 enumerations in the bill as to what is prohibited under the bill.

Mr. GILMAN. Mr. Chairman, there is also stated in the bill that an employee may not engage in political activity, under a number of circumstances; for example, while on duty?

Mr. CLAY. The gentleman is correct.

Mr. GILMAN. But nowhere in the bill do you set forth just what constitutes "political activity."

In the former code, under the Federal regulations, under title V, there is set forth a list of permissible political activities, and there are some 10 or 12 activities listed. Section 733.111 of the Code of Federal Regulations sets forth the permissible activities listed, and then there is listed prohibited activities in sections 733.121, 733.122, and 733.123 of the Federal Regulations.

If an employee were to examine this statute, he would find that it does not spell out what is permitted and what is prohibited. That is what I am concerned about. We are talking about prohibiting political activity, and yet we do not spell out the parameters.

How do you intend to provide that definition; how do we provide the kind of detailed information for the employee that we are seeking as a reform in this measure?

Mr. CLAY. Mr. Chairman, I will answer the gentleman in this way: We are doing precisely what should have been done a long time ago. We should not define for a Federal employee what "political activity" is; we can place certain limitations on it. That is what the bill is doing when we enumerate these prohibitions.

However, anything that is not specifically prohibited by this bill or by some other existing law ought to be permissible; just as it would be permissible for any other American citizen.

Mr. GILMAN. Essentially then what we are doing is providing a pretty broad, general term, and we will be leaving the final determination, to some agency or to the courts. Is that what the gentleman intends?

Mr. CLAY. No. It is true that the present Hatch Act does not have a definition for "political activity." What the committee has done is to set up those things which are permissible and those things which are not permissible. We are saying that anything that is not specifically prohibited is permissible; so long as it is within the other laws that involve political activity in this country.

Mr. GILMAN. Mr. Chairman, I thank the gentleman for yielding.

Mr. ROUSSELOT. Mr. Chairman, will the gentleman yield?

Mr. CLAY. I yield to the gentleman from California.

Mr. ROUSSELOT. Mr. Chairman, I appreciate my colleague's yielding.

I have asked the gentleman to yield so that we can review here some of the prohibitions that do exist, because we are not relieving Federal employees of all prohibitions as they relate to political activities. My understanding is that under section 7325 we are stating specific prohibitions, as follows:

First, that a Federal employee may not engage in political activity while such employee is on duty;

Second, that he cannot engage in political activity in any room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States, in the government of the District of Columbia, or in any agency or instrumentality of the foregoing; and

Third, he cannot engage in political activity while wearing a uniform or official insignia identifying the office or position of such employee.

As I understand it, then, there are some specific prohibitions. There has been a great deal of discussion here about postal workers, for instance, who usually wear uniforms. They could not engage in political activity while wearing their uniforms; is that correct?

Mr. CLAY. The gentleman is correct.

Mr. Chairman, I might also point out that I will expect to take some of the time taken up by this colloquy from the other side at a later point.

Mr. ROUSSELOT. Fine. I would be more than happy to yield to the gentleman from Missouri (Mr. CLAY) if he has additional questions. However, my point is that in official capacity or in official Federal buildings or in official uniforms, Federal employees will not be able to

engage in political activity, and there are minor penalties for the violation of that, although most of the determination of what those penalties will be is left to this new board that is created in the bill; is that correct?

Mr. CLAY. That is correct.

Mr. ROUSSELOT. Mr. Chairman, I thank my colleague, the gentleman from Missouri.

Mr. DERWINSKI. Mr. Chairman, I yield 5 minutes to the gentleman from Tennessee (Mr. BEARD).

(Mr. BEARD of Tennessee asked and was given permission to revise and extend his remarks.)

Mr. BEARD of Tennessee. Mr. Chairman, this legislation, H.R. 8617, is an attempt to remove Federal employees from the political restrictions of the so-called Hatch Act, which has the official title of "An act to prevent pernicious political activities."

We are told that the United States is the only free world nation to so severely restrict the political activities of its Government employees.

This allegation is baseless when an examination is made of the political practices of other free world nations.

Compared to Japan, which prohibits all forms of political activity and political expression, with the single exception of the right to vote, the United States is a paragon of liberalism and toleration. As one might expect, for the past 30 years Japan has benefited from a strictly professional, scrupulously nonpartisan civil service, while the United States has had more than its share of blemishes, particularly at the State and local level. But this surely does not mean that the United States should restrict the political activities of its employees to the same degree as Japan. After all, we are two different nations, with different governments, histories, cultures, customs, and legal codes. What is good for Japan is not necessarily good for the United States and vice versa.

If the civil service laws of Japan should not serve as a model for the United States, neither should those of Great Britain, Germany, Canada, France, or any other nation. Though the differences between the United States and other free world nations are many, the most significant, for our purposes, is this: For each administrative office filled by a political appointee in other countries,

dozens are filled with such appointees in the United States. This is no flaw in our system of government, but a necessity.

The will of the Nation, as carried out by the Chief Executive, could not other-

wise be translated into action. But political appointees can undermine the administration of the law as well as promote it, if the partisan pressures they exert result in the politicalization of the civil service. No other nation possesses a civil service so susceptible to this risk.

Examination on a country-by-country basis simply underscores that the experiences of nations with few restrictions on the political activities of their government employees have no meaning for the United States.

The Scandinavian countries have never been plagued by a spoils system. This is due more to custom and character than to any long-standing legal code. In ancient times, administrative posts were the birthright of the nobility. With the decline of the aristocracy, offices were first sold to the highest bidder, and later assigned through a highly elaborated system of formal requirements and recommendations, a system which developed toward the end of the Middle Ages and which has been used ever since. Even in the judiciary branch, where no formal appointment scheme has ever evolved, patronage has never been a problem. Though politicians make the appointments, custom demands that they set aside political considerations, and the custom is rarely, if ever, breached.

In France, the merit system is more inflexible, hence less subject to abuse, than the merit system of the United States. Without exception, the individual who scores highest on the merit examination receives the civil service post. There is no opportunity for a supervisor to select one candidate from a group of three. Employees in the highest posts, the equivalent of our supergrades, are even better insulated from partisan pressure. All are graduates of the National School of Administration, and each selects the post in which he would like to serve. To insure the strict observance of the merit principle, a Supreme Council, which is composed of employee and government representatives, along with lesser committees scattered among the administrative branches, supervises promotions, transfers, and disciplinary action.

The danger in France, according to some political scientists, is that the interests of the public might take second place to the interests of the public employee.

In Australia, the permanent department head, who traditionally remains wholeheartedly nonpartisan, directs the recruitment and promotion of public employees. His decision is not the final word. If any employee believes that he is as qualified as, or better qualified than,

an employee who has received a promotion, he may ask the Public Service Board or the Appeals Commission to intervene. This is no little-used device; historically, more than 20 percent of all promotions have been contested. As a further check, Staff Associations take part in personnel administration, appointing employee representatives to sit

on committees which hear discipline and promotion appeals. One final note: All public employees are forbidden to comment "upon any administrative action or upon the administration of any department."

In Great Britain, civil service employees are subject to restrictions far more stringent than those offered by H.R. 8617, and they are also better protected from abuse. Only 70 officials in the entire executive branch are political appointees, and these appointees must discharge their duties in Parliament, as well as supervise their departments. Employees are further protected by a National Civil Service Council, a board of 54 members, half appointed by the Government, half by civil service associations. The danger in Britain is that the politicians, so outnumbered by the well-protected civil service employees, may find themselves managed instead of managing.

In West Germany, employee representatives supplement the protection afforded by the merit and civil service systems. The Committee on Personnel, the German counterpart of our Civil Service Commission, is composed of seven members, four appointed by Government, three by unions of civil service employees. Public employee representatives, elected to 3-year terms, serve on councils of from 1 to 25 members, which play an active role in the appointment and promotion of employees within the various branches and levels of government.

Canada, which was for so long so closely associated with Great Britain, has nevertheless been profoundly influenced by the United States. It is not surprising, then, that of all the countries surveyed by the subcommittees, none has a history, culture, or Government so like our own. Canada's restrictions on the political activities of its Government employees, while not quite as stringent, closely resemble those we have developed. To advocates of the ecological approach to the study of government, this, too, will come as no surprise. Similar circumstances often create similar problems, which must be solved with similar means.

Mr. Chairman, this legislation must be viewed for what it is—a careless grab for power by certain powerful organiza-

tions. The House should respond accordingly, by soundly defeating this proposal.

Mr. CLAY. Mr. Chairman, I yield 5 minutes to the gentleman from Virginia (Mr. HARRIS).

(Mr. HARRIS asked and was given permission to revise and extend his remarks.)

Mr. HARRIS. Mr. Chairman, as a member of the subcommittee which has spent many hours of careful, deliberative work over the last 7 months on the Federal Employees Political Activities Act of 1975, I rise in full support of the bill before us today. H.R. 8617 is a milestone of reform. I can think of no better way to commemorate our Nation's 200-year anniversary of independence than to grant 2.8 million citizens their political freedom.

H.R. 8617 is not a repeal of the so-called Hatch Act. It significantly expands and clarifies the rights of Federal and postal employees. Its emphasis is this: it restores to Federal civilian and postal employees their rights to participate voluntarily, and off-duty in the political processes of our Nation. While granting employees these basic rights, it also clearly prohibits abuse and assures the continued impartial administration of our laws.

PROTECTIONS AND PROHIBITIONS

H.R. 8617 contains several important new provisions designed to prohibit abuse, both by the employee and employer, and to protect the integrity of the Federal service. For example, the bill—

Prohibits employees from using their official authority or influence for a political purpose;

Prohibits all employees from intimidating, threatening, coercing, commanding, or influencing any individual to vote or not to vote, to contribute or not to contribute to a political cause, or engage or not engage in political activity;

Prohibiting employees from soliciting, accepting or receiving political contributions while on duty;

Prohibits employees from engaging in political activities while on the job, while in a room or building during the discharge of official duties, and while wearing a uniform of his or her job.

Establishes an independent Board on Political Activities to hear and adjudicate alleged violations of the law; and

Requires the Civil Service Commission to conduct a program to inform employees of their rights of political participation.

These features of the bill, in my view,

are strong, new, and explicit provisions which go hand in hand with the granting of political rights. They protect both the employee and the employer. These protections are broader, clearer, and more explicit than under the current law.

CURRENT LAW CONFUSING

H.R. 8617 eliminates many of the confusions of current law. A myriad of regulations and 3,000 administrative rulings create endless ambiguities in the minds of employees and those who interpret the law. The regulations contradict themselves. For example, the Code of Federal Regulations lists 13 permissible activities under current law. However, following this catalog is a provision which gives the head of an agency the discretion to prohibit or limit political activities.

Additionally, under current regulations, employees "may not take an active part in political management or in a political campaign," yet he or she may "display a political picture, sticker, badge, or button," and "be a member of a political party or other political organization and participate in its activities to the extent consistent with law." One may "express his opinion as an individual privately and publicly on political subjects," but one cannot address a convention, caucus, rally, or similar gathering of a political party in support of or in opposition to a partisan candidate for public office or political party office."

The gray areas of the law lead to uncertainty. It is not fair to the employee or employer to have so much discretionary interpretation.

EMPLOYEES MUZZLED

The ambiguities of existing law lead many employees to remain uninvolved, for fear of a mistake and reprisal. Most Federal employees feel inhibited—though they have some political rights now—because they do not know what they can and cannot do, and still hold on to their job. During hearings, the subcommittee heard time and time again that employees hold back, so much so that in some cases they are reluctant to join even purely nonpartisan organizations like Common Cause. Thus, the effect of the current law has been to discourage any political participation, a basic right afforded all our other citizens. Operating under such confusing rules, employees "play it safe"; as one employee put it, they are "politically sterile."

VIOLATES BASIC RIGHTS

Current Hatch Act proscriptions vio-

late constitutionally guaranteed rights of free speech and free association. These limitations, which in my view are excessive, discriminate against this segment of the population, denying them opportunities afforded all our other citizens. This is wrong and unfair.

ENCOURAGES "FRAUD"

Current law creates "legitimate deception." In certain areas designated by the Civil Service Commission, like northern Virginia, where my district is located, Federal employees can be candidates under an independent banner. Though "independent" candidates, they can and do receive a Democratic or Republican endorsement. Everyone is well aware of the candidate's political affiliation; party workers work for them. They are partisan in all but the name. I believe it is more honest to make the affiliation official and open.

HARMS THE FEDERAL GOVERNMENT

Restrictions on employees' private political activities means that many competent individuals refuse to work for the Federal Government. Many people, with skills and abilities needed by the Government, will not give up their rights and become "hatched." Consequently, the Government's recruitment efforts are hampered; the Government never gets many able individuals. I believe the Federal Government needs the most competent men and women we can get, especially when, in the higher paying jobs, we are losing them right and left because of the executive pay freeze. The Hatch Act stands in the way of attracting the best possible public officials.

ENACTMENT WILL BRING JUSTICE

To those who say that this bill will threaten the integrity of the merit system, I say think back just a short time to the so-called Watergate era, where we saw the worst political abuses in our Nation's history. Gross abuses occurred despite the Hatch Act. To those who say increased political activity of Federal employees will weaken the Federal service, I say we need more voluntary political activity, not less—to preserve the integrity of the system. To those who say, Federal employees already have many advantages not shared by private-sector employees, I say, what about the 5-percent cap on their salaries? The executive pay freeze? The refusal of the House to muster enough votes to approve an increased Government contribution to their life insurance program? The recent announcement that their health care costs will skyrocket?

The Hatch Act is "confusing, ambiguous, restrictive, negative in character,

and possibly unconstitutional," said the Commission on Political Activity of Government Personnel. I call on my colleagues to join me in bringing justice to this important group of "disenfranchised" people."

Mr. ROUSSELOT. Mr. Chairman, will the gentleman yield?

Mr. HARRIS. If the gentleman would wish to give me 2 additional minutes of his time, I would be glad to.

Mr. DERWINSKI. Mr. Chairman, I will be pleased to yield 2 minutes to the gentleman from Virginia so that the gentleman from California can help enlighten the gentleman.

Mr. HARRIS. I thank the gentleman.

Mr. ROUSSELOT. Will the gentleman yield?

Mr. HARRIS. I will be happy to yield to my good friend, the gentleman from California.

Mr. ROUSSELOT. I appreciate my colleague's yielding.

The gentleman realizes that part of the problem that he has just described—and that is the inability of Federal employees to fully understand what their rights are under the law—has been at least partially altered in this bill when we insisted that the Commission shall inform each Federal employee at least once every year what he may or may not do under the new law if we pass most of these amendments. So part of the problem to which the gentleman addresses himself will be clarified under this bill.

Mr. HARRIS. I believe it will be, and I think it is one of the important features of this bill that it does eliminate this kind of confusion. The point of notice that my colleague brings up is especially important. He not only gets notice, but he gets notice in a form different from the current regulations which tell him what he can do, and then tell him what he cannot do if his agency head tells him not to.

Mr. ROUSSELOT. I appreciate my colleague's yielding.

Mr. DERWINSKI. Mr. Chairman, will the gentleman yield for a question?

Mr. HARRIS. I yield to my friend, the gentleman from Illinois.

Mr. DERWINSKI. I want to be sure I understood the gentleman. The gentleman said—correct me if I am wrong—he believes the present Hatch Act violates the constitutional rights of citizens who by their employment are restricted.

Mr. HARRIS. Yes.

Mr. DERWINSKI. Yet my understanding is there have been challenges over the years in the courts against the Hatch Act and the Hatch Act in its present form has been consistently sustained by the Court. Is that not true?

Mr. HARRIS. If I may, I know my colleague believes, and I believe the same also, that whatever the Supreme Court says is right with respect to the Constitution, is correct, and we will be adhering to that principle. I might sometimes disagree with the Supreme Court but in this case I do not. I believe those decisions were on very narrow issues. I do not believe at any time the Supreme Court ever took up the Hatch Act as a whole and declared it constitutional.

Mr. CLAY, Mr. Chairman, will the gentleman yield?

Mr. HARRIS. I yield to the gentleman from Missouri.

Mr. CLAY, Mr. Chairman, I believe we should clarify what the Supreme Court said. It said this body had the authority to enact laws that could limit political activities to Federal employees. They did not say it was in any way unconstitutional to modify the Hatch Act.

Mr. DERWINSKI. If the gentleman will yield, they did not say either the present Hatch Act was unconstitutional.

Mr. HARRIS. No. I do not believe they have ever had that entire problem before them.

Mr. DERWINSKI. Mr. Chairman, I yield myself 5 minutes.

(Mr. DERWINSKI asked and was given permission to revise and extend his remarks.)

Mr. DERWINSKI. Mr. Chairman, this afternoon the House is debating legislation of significant importance to the Federal Government, the American people, and to almost 3 million civilian Federal employees.

At stake is whether the Congress wishes to retain the "Hatch Act," or effectively repeal it as H.R. 8617 will do.

The Hatch Act, which prohibits certain partisan political activity, such as fundraising, political campaigning, and soliciting votes, has for 36 years successfully protected career Federal employees from pressures and coercion to engage in political activities not of their own choosing.

Therefore, civilian Federal employees, except for Presidentially appointed officials of the Federal Government, do not owe their appointments to any political party, and do not need to curry the favor of any political party to receive a promotion, assignment, or any other consideration in the Government.

Federal employees, receive appointments, promotions, assignments in the Federal Government on merit and performance. That is the keystone of the merit system.

History has shown that the best way to prevent improper political activities

on the part of employees is to give them positive assurance that their continuance in office depends upon the service they render to their Government and not upon their skill in corraling votes, soliciting funds, or supporting a political candidate or party.

However, I am afraid this would all change if we accept this bill labeled as the "Federal Employees Political Activities Act of 1975."

It should come as little surprise to the House that the impetus for this legislation comes not from the rank and file employees—but rather from some leaders of Federal employee unions affiliated with the AFL-CIO.

The reason is simple. Enactment would substantially increase the influence of Federal and postal union bosses over the Congress.

Throughout the hearings, the committee was inundated with the thesis that Federal employees support H.R. 8617. Further, we were told that at every convention of Federal employee unions held since 1968, all the delegates have voted for repeal of the Hatch Act. I question both assertions.

I believe that if career Federal employees were given a choice between the Hatch Act and H.R. 8617, employees would support the present system.

The resolutions union leaders put before the delegates routinely receive approval, so the voting at the conventions is not necessarily indicative of overwhelming rank and file support. Since the proposed legislation will greatly increase the union leaders' political clout, it is not surprising that they vigorously urge its enactment. In sharp contrast, leaders who care little for the cultivation of political muscle, such as Dr. Nathan Wolkomir of the National Federation of Federal Employees, the largest independent union in its class in the United States, strenuously oppose the bill. In fact, he has charged that organized labor's interest in the bill "is nothing more than the old AFL-CIO pitch for muscle and power. It's a move for money and more organizing influence."

Most witnesses before the subcommittee fell into two classes: the union leader and the politically ambitious employee. Clearly, both can only benefit from the passage of H.R. 8617, and neither is representative of the average employee. Yet it is the opinion of the typical, nonpolitical Federal employee, who stands to gain little and risks losing much, which must be taken into consideration.

Though not many individuals representative of the average employee tes-

tified before the subcommittee, those who did were generally grateful for the protection the Hatch Act provides and could recall meeting few others during their long careers who were chafed by its restraints.

While not all Federal employees will become deeply involved in partisan affairs, if this bill were to pass, all will be subjected to the subtle coercive forces unleashed. In the minds of many employees, there is little doubt that such coercive forces would exist. When asked by the Survey Research Institute whether repeal of the Hatch Act would "change things like job appointment and job promotion," a majority replied in the affirmative. And every citizen in the country would suffer if the politicization of the Civil Service leads to a deterioration in the quality of service Government can provide.

The best evidence available—survey evidence—demonstrates that Federal employees prefer the Hatch Act to its repeal.

In a poll of its members conducted in 1967, the National Federation of Federal Employees found that 89 percent of the respondents supported the Hatch Act "as is," while only 1 percent suggested that it be repealed.

One year later, the Survey Research Institute of the University of Michigan, as professional and impartial an organization as one can find, interviewed in depth a small but carefully chosen sample of Federal employees. The results: 48 percent were satisfied with the level of participation permitted by the act, while 47 percent wanted "more."

More participation, however, cannot be construed as support for H.R. 8617. If anything, it represents support for the status quo. Of that 47 percent, only 4.2 percent suggested that the employee should be allowed to campaign for a political party or candidate, and a mere 1.5 percent stated that an employee should be allowed to run for political or partisan office.

Mr. Chairman, it seems incongruous that the House today is being asked to repeal the Hatch Act when just 36 years ago, the 76th Congress in 1938, composed of 262 Democrats—169 Republicans in the House and 69 Democrats and 23 Republicans in the Senate—which is a larger percentage of Democrats than what the situation is today—overwhelmingly voted to approve the Hatch Act and end political manipulation of Federal employees.

At a time when public polls reflect the fact that many Americans hold their Government in low esteem, it is reckless

to consider legislation which will further erode public confidence.

Mr. Chairman, I would like the chairman to know I have so much information to argue with against the passage of this bill that it is with a great deal of self-restraint that I limit myself to sum up. I would like to point out a number of things for the Members of this House who, in view of their busy schedules, may not have had a chance to really study this bill.

The Hatch Act prohibits certain partisan political activities such as fundraising and campaigning and soliciting funds, and it has been successful in its 36 years of existence in protecting career Federal employees from pressure and coercion, that they otherwise might be subject to, to engage in political activities.

In my judgment, civilian Federal employees, career employees who do not owe their appointments to any political party do not need to curry the favor of any political party to receive a promotion and assignment, need the protection of the present law.

Further, Mr. Chairman, history has shown that the best way to prevent improper political activity on the part of Government employees is to give them the positive assurance contained in the present act that their service depends on the quality of service they render to the Government and not upon their skill in pursuing votes, contributing, or soliciting funds, or openly supporting a political candidate or party.

I do not believe that in the extensive hearings that were held for this bill there was any pattern of support for the major adjustments being suggested on the part of rank-and-file Federal employees. The changes that were requested that are contained in the bill before us come primarily from the Federal employee union leaders and the handful of politically active or let us say politically ambitious individuals. The rank-and-file Federal employee appreciates the protection that he has had for years under this Hatch Act, for the past 36 years.

Mr. Chairman, I would like to remind the Members that this Hatch Act was passed by the Congress in 1939.

The Congress at that time was composed of 262 Democrats; 169 Republicans in the House, 69 Democrats and 23 Republicans in the Senate. It certainly was not a partisan measure. It had the support at the time of President Franklin Roosevelt, who recognized in a statement to the Congress the abuses that had developed in the years preceding its passage. Let me quote from a statement

made by President Franklin Roosevelt on this bill:

It is my belief that improper political practices can be eliminated only by the imposition of rigid statutory regulations and penalties by the Congress.

He further went on to say:

Furthermore, in applying to all employees of the Federal Government (with a few exceptions) the rules to which the Civil Service employees have been subject for many years, this measure—

Meaning the present Hatch Act—

is in harmony with the policy that I have consistently advocated during all my public life, namely, the wider extension of Civil Service as opposed to its curtailment.

Now, the issue at that time was open political abuse by a growing number of Federal employees. The Hatch Act was deemed necessary to protect Federal employees from, first, the pressure being placed upon them and then a second protection that in the eyes of some of the Members of Congress at the time, was a more important protection, was to protect them from the political activities being generated by a growing number of Federal employees.

Now, I would like to say this in as nonpartisan fashion as I can. I say this to my friends on the other side of the aisle. Just remember, if we pass this bill as it has been brought to the floor and theoretically we unleash this power of the 2.8 million civilian employees presently Hatched under the law, the first potential problems are not going to be felt by the people on my side of the aisle.

The CHAIRMAN. The time of the gentleman from Illinois has expired.

Mr. DERWINSKI. Mr. Chairman, I yield myself 2 additional minutes.

Mr. Chairman, the first potential political problems will obviously show up in Democratic Party primaries. It was that kind of activity back in 1938, and in 1936 and 1934, that brought about the action by the very strongly Democratic Congress in imposing the present Hatch Act. But I do suggest to those of us who are really concerned with the long-range implications, that those Members on the majority side could well be creating a monster that could be devouring them. That was the real motivation for the passage of this Hatch Act and the situation has not changed.

At that time there were approximately 900,000 Federal civilian employees. Today there are 2,800,000 Federal employees. They constitute, if uncontrolled, a very dangerous political force, not always in the best interests of the taxpayers.

The whole purpose of the Hatch Act

is to insure in the terms of the public that the service to be rendered by career Federal employees is absolutely free of political considerations. To be absolutely free, they are to be free from coercion, they are to be free from temptation to use their offices for their own or their friends political advancement.

Mr. Chairman, I could go on but let me say to sum it all up that this is basically a very ill-timed, a bad bill. It is bad politics, it is bad Government.

This Hatch Act was passed overwhelmingly by the Congress 36 years ago. It deserves to be reaffirmed 36 years later by a vote against this bill.

Mr. CLAY. Mr. Chairman, I yield 2 minutes to the gentleman from Texas (Mr. ECKHARDT).

(Mr. ECKHARDT asked and was given permission to revise and extend his remarks.)

Mr. ECKHARDT. Mr. Chairman, first, I wish to compliment my distinguished colleague from Missouri (Mr. CLAY) for preparing this bill, and to compliment my colleagues on his committee for presenting it to us. I think it is an excellent bill.

I recollect that about 35 years ago I was a Government employee subject to the act. At that time I was an employee of NELSON ROCKEFELLER, who was Coordinator of Inter-American Affairs under a Democratic President, Harry Truman. I have always liked to draw cartoons. Besides that, I could make \$25 a week by drawing cartoons for a little newspaper, which I did, and, I must admit, they were pretty political. But I drew them under the pseudonym, the Jack of Diamonds.

It seemed to me that it was nobody's business if I wanted to express my views in a political campaign as long as I was not using the influence of my office to influence the election. I thought it my constitutional right to do so. But, I suppose under the restrictions of the act, literally construed, an individual employed by the Government could not so take an active part in a political campaign.

That particular restriction of the act does not use the qualification of using official authority or influence for the purpose of interfering with or affecting the result of an election. I suppose that section about active political participation can be construed as covering an action which is only a personal expression and clearly unrelated to one's action in an official capacity.

Mr. Chairman, I favor the bill.

Mr. DERWINSKI. Mr. Chairman, I yield 6 minutes to the gentleman from California (Mr. ROUSSELOT).

(Mr. ROUSSELOT asked and was given permission to revise and extend

his remarks.)

Mr. ROUSSELOT. Mr. Chairman, at the appropriate time I intend to offer, with my colleague from New York (Mr. GILMAN), several amendments which I think will help improve several areas that I think need clarification. I intend to offer an amendment that would require a Federal employee who is a candidate for election to notify promptly the agency where he is employed of such candidacy.

The purpose of this amendment is to prevent those who are candidates for full-time elective positions from remaining on the Federal payroll the entire time that they are campaigning. This amendment would require an absence without pay from their jobs for 90 days prior to a primary election and 90 days prior to a general election.

The reason I intend to offer this amendment is because, in the private sector, most people who run for office—especially Federal office—are usually required to resign their positions. Usually, this is required by a board of directors and as a general policy and/or expression. It truly is the case in many State or city government responsibilities that such is necessary.

Second, I will offer an amendment that would make it a Federal crime for anyone to use the threat of violence or economic sanction to coerce a Federal employee to engage in political activity.

Although the penalties under my amendment are not as severe as they are in other criminal actions, I believe we should make it more clear we are not intending to tolerate the misuse of coercion in any regard against Federal employees.

The reason I think this amendment is necessary is that, in our hearings across the country, we did have testimony by many present Federal employees who felt that this was one of the good aspects of the civil service acts that prevented any kind of overt political activity, especially in regulatory agencies; and so I felt that this amendment—and I will discuss it later in more detail—would be helpful.

My colleague, the gentleman from New York (Mr. GILMAN), will propose an amendment, which I support, to insure that any potential criminal prosecutions by the Department of Justice would not be damaged or destroyed by broad grants of immunity from prosecution by the Board on Political Activities.

So I felt we should protect the Justice Department for at least the time frame of 30 days, to ask that they be allowed to approve of the grant of immunity be-

fore it was given by the Board to a Federal employee.

Another amendment that the gentleman from New York (Mr. GILMAN) will offer, which I will support, will be an attempt, I think, to make sure that Federal employees are not kept dangling under investigative procedures which are provided for in this act. The Civil Service Commission would be required to complete an investigation of a Federal employee's alleged illegal political activities within the 90-day time frame. If any additional time is required, that they go to the board on political activities for an extension.

The reason I felt that that was necessary was because sometimes under present procedures of the civil service, investigations of all kinds could be carried out for long time periods, and I felt that some kind of a termination should be expressed, hopefully by the will of Congress. So I will support, with the gentleman from New York (Mr. GILMAN), this additional amendment.

Mr. HARRIS. Mr. Chairman, will the gentleman yield?

Mr. ROUSSELOT. I yield to my colleague, the gentleman from Virginia.

Mr. HARRIS. Mr. Chairman, I appreciate the gentleman's yielding.

I want to say that many of the amendments proposed in the committee seem to have a great deal of merit and do in fact improve the bill.

However, I am concerned about my colleague's amendment with regard to the requirement for mandatory leave where the individual feels and the employee feels he can properly perform the duties and give the time to his duties at the same time he may be campaigning for office.

Mr. ROUSSELOT. For Federal office?

Mr. HARRIS. For Federal office. I wonder if my colleague feels that such a mandatory leave requirement is necessary in the bill.

It seems to me it would foreclose the opportunity for many employees to actually operate under the right which is given to them.

Mr. ROUSSELOT. If it did so, I would not offer it. I at one time ran for Congress after I decided to resign from the Federal Housing Administration. I do not think it puts the Federal employee in that position at all. I think that it clearly is an attempt to say that the Federal taxpayers will not be paying salaries to Federal employees who run for Federal offices, at least for a time frame of 90 days, in either a primary or a general election.

The CHAIRMAN. The time of the

ing much, which must be taken into consideration.

Though not many individuals representative of the average employee testified before the subcommittee, those who did were generally grateful for the protection the Hatch Act provides and could recall meeting few others during their long careers who were chafed by its restraints.

While not all Federal employees will become deeply involved in partisan affairs, if this bill were to pass, all will be subjected to the subtle coercive forces unleashed. In the minds of many employees, there is little doubt that such coercive forces would exist. When asked by the Survey Research Institute whether repeal of the Hatch Act would "change things like job appointment and job promotion," a majority replied in the affirmative. And every citizen in the country would suffer if the politicization of the Civil Service leads to a deterioration in the quality of service Government can provide.

The best evidence available—survey evidence—demonstrates that Federal employees prefer the Hatch Act to its repeal.

In a poll of its members conducted in 1967, the National Federation of Federal tion. So, Mr. Chairman, I think we should provide that kind of equity.

Mr. CLAY. Mr. Chairman, I yield 2 minutes to the gentlewoman from Texas (Ms. JORDAN).

(Ms. JORDAN asked and was given permission to revise and extend her remarks.)

Ms. JORDAN. Mr. Chairman, one of the arguments we have heard in opposition to this bill is that by partially lifting the ban on political activities by Federal employees, we are providing a means whereby employees may be the targets of subtle coercion by superiors. Only total prohibition from engaging in political activities will adequately shield employees from coercion, it is said. I believe that argument is an attempt to confuse, and nothing more.

The bill before us, the Federal Employees Political Activities Act of 1975, provides stronger controls over coercion than current law. If we were debating a bill which merely lifted the ban on political activities without adding any controls, then the argument of some of my colleagues might be persuasive. But the bill totally revises the broad, vague language found in current law into a system of tight, interlocking controls to protect Federal employees against coercion.

The bill expands the investigatory powers of the Civil Service Commission

to investigate complaints of coercion and to conduct its own investigations. The Commission need not wait for a complaint to be filed. It may, and it is directed by the committee, to take all steps necessary to insure that the prohibitions are observed by employees.

The bill establishes for the first time an independent adjudicatory agency, the Board on Political Activities of Federal Employees. Should the Civil Commission, after investigation, uncover violations of the Act, the bill requires the Commission to submit its findings in detail to the Board.

The bill authorizes the Board to issue subpoenas, order deposition, and compel testimony of an employee.

The bill provides that decisions of the Board are reviewable by the courts. This provision is necessary to assure complete adherence to due process.

The bill authorizes the Board to order penalties against employees found to have violated the act. A broad range of disciplinary actions are set out in the bill. Should the Board order disciplinary action, the Board must notify the Commission, the employee, and the employee's agency of the decision. The agency is required to report back to the Board the measures it has taken to implement the penalties ordered.

The bill provides stringent reporting requirements on the Civil Service Commission. Each year the Commission must submit to the Congress a report detailing the investigations it has undertaken, the name and title of the individuals involved, the amount of money expended in its educational programs, and an evaluation of its educational program.

None of these provisions are in current law. They are all new. They are more than sufficient for protecting Federal employees from coercion, overt or subtle.

Mr. DERWINSKI. Mr. Chairman, I yield 5 minutes to the gentleman from Ohio (Mr. KINDNESS).

(Mr. KINDNESS asked and was given permission to revise and extend his remarks.)

Mr. KINDNESS. Mr. Chairman, I thank my colleague, the gentleman from Illinois (Mr. DERWINSKI), for yielding this time.

I have a couple of uncertainties that have occurred to me in looking at the bill which do not seem to be answered within those four corners.

For one thing, in the definition of an "employee" covered by the bill there is a reference to the competitive service, but the term is not capitalized, nor is there a reference to a place where "competitive service" is defined.

The question then arises, Does "employee" include people who work for or in independent agencies of the Federal Government, and does it include employees who work in the legislative branch or in the judicial branch?

If we are talking about an employee at the level of someone who works in the maintenance of buildings, that would be one thing. However, let us say that someone in the Supreme Court, who is at a higher level, may have particularly interesting or important information of a political nature to deal with in his work. I would think the consideration would be rather different as to whether such an employee should or should not be included in the coverage of the act.

With respect to independent agencies, such as the TVA, it seems unclear as to whether employees there are included as I believe they are under the Hatch Act at the present time; and if so, there is the matter of equities for some Government employees as compared to others. I would certainly be interested in an explication of that.

We have the situation of a gentleman who works for the Department of Health, Education, and Welfare, who is a registered lobbyist before this Congress on matters of gun control legislation. I have looked into the question of when he does his lobbying, whether on the taxpayers' time or on somebody else's time, and that is not entirely clear yet to me. However, he is registered as a lobbyist.

Under the bill that we have before us, I am assuming that political activity might include lobbying because "political activity" is not defined.

I commend those who have worked on the bill for their efforts in this direction, but nonetheless, the bill leaves a lot of unanswered basic questions. For example, in the "political activity" term there could be included within the definition the general concept of lobbying, attempting to affect the outcome of legislative considerations; but what about that concept of lobbying which is trying to affect the outcome of administrative determinations or decisions on policy matters?

This is a problem with which we are struggling in terms of the Lobbying Act that is before the Committee on the Judiciary at the present time. Are those political activities? The bill does not make that at all clear.

The gentleman from Missouri (Mr. CLAY), in responding to an earlier question, indicated that anything goes that is not prohibited, in effect. Therefore, I think we have a bill that, whether intentionally or not, may be far broader in its

scope than we really intend at this point.

On page 6 of the bill there is a problem with the definition or definitional aspect of the exclusion of people who work for the White House, it seems. Suppose someone works for the White House or is paid from the appropriation for the White House office, as referred to on page 7, but outside of those activities, also lobbies before this Congress or does other work which would appear to be of an improper nature, if outside the scope of his official duties, to influence the outcome of administrative decisions.

Mr. Chairman, I think we do have to consider and to deal with questions of this nature before undertaking to support and approve a bill such as H.R. 8617.

For those reasons, I cannot support it.

Mr. CLAY. Mr. Chairman, I yield 2 minutes to the gentleman from California (Mr. MINETA).

(Mr. MINETA asked and was given permission to revise and extend his remarks.)

Mr. MINETA. Mr. Chairman, I rise in support of H.R. 8617, the Federal Employees' Political Activities Act of 1975.

That this bill is important, I believe we can all agree. It is important because it would remove the vagueness of over 3,000 administrative determinations on the political rights of Federal employees and the unconscionable abridgement of their freedoms of speech and association—both of which have prevailed since enactment of the Hatch Act in 1939.

The measure now before us is the product of countless hours of hard and gruelling work by the subcommittee, and represents the recommendations made by witnesses during nationwide hearings held by the Employee Political Rights and Intergovernmental Relations Subcommittee.

By providing tighter employee protection against coercion than existing law, by differentiating between voluntary and involuntary political activity, by prohibiting political activity which even appears to interfere with the effectiveness of good government, and by mandating the fair and impartial enforcement of its provisions through the establishment of an independent board and the clear delineation of administrative and judicial functions, H.R. 8617 strikes a careful and workable balance between meaningful political participation by Federal employees and the integrity of the civil service.

That these amendments to the Hatch Act are now needed, should also be obvious.

When a recent Cadell Hart survey indicates that only 34 percent of the people

who voted in the November 1974, elections believed that their vote would make a difference, we must seriously confront the question of whether we can continue to politically isolate 2.8 million people just because they are Federal employees.

And, we must respond to that question by passing H.R. 8617.

Thank you, Mr. Chairman.

Mr. DERWINSKI. Mr. Chairman, I yield 5 minutes to the gentleman from Maryland (Mr. GUDE) who, in view of his constituency, has a very special and knowledgeable interest in this matter.

(Mr. GUDE asked and was given permission to revise and extend his remarks.)

Mr. GUDE. Mr. Chairman, next to the District of Columbia and the 10th Congressional District of Virginia, more civil servants reside in my congressional district than in any other.

My district, therefore, has one of the largest stakes in H.R. 8617, a bill that would broadly liberalize the provisions of the Hatch Act.

I am opposed to the bill and will be offering several amendments which I hope can be adopted, if it is going to pass, in order to make it less objectionable.

I will tell the Members very honestly that I cannot really figure this one out. My colleagues here on the floor are fond of balking at requests for my district saying that it is one of the most affluent and powerful because of all the many fine Federal agencies that are located there.

So I would like to know what I have done right this time because I want to know why they are going to hand me a bill which will inevitably make the Maryland Eighth Congressional District one of the most powerful in the Nation.

One has only to flip through the Congressional Directory to see that a great number of agency and department heads reside in my district. Under H.R. 8617 the civil servants will no longer be prohibited from running for partisan elective public offices or from managing partisan campaigns.

In short, the civil service is going to be pervaded with a "voluntary sense" of pleasing superior and fellow colleagues who are running for partisan public office by making the agency or department a friend of Montgomery County. This could easily be done without violating the prohibitions set forth in H.R. 8617.

Let us take the administrative law judges in the Federal Trade Commission. Eight out of 10 of them, including the chief judge, reside in my district. Should any one of these men or their staff run for partisan office in the county, there is

no telling in what ways antitrust suits or consumer protection cases involving the district might be colored. Perhaps it is only a promotion-hungry staff member who perceives the facts in the case in such a way as to please his boss' potential constituency.

Or take the case of the Chairman of the Veterans Appeals Board who also resides in my district. The Chairman is responsible for some 30,000 decisions per year, of which 100 or so are pending in my district at any one time. How would this affect the substantiating evidence gathered by his staff, knowing that he is running for county executive in the district?

This is the biggest boon for Montgomery County in all my years in Congress.

All kidding aside, Federal employees do not want to be "unHatched." The rank and file members of the civil service have a strong sense of professionalism about their jobs, and they do not want that pride encroached upon by those hard-to-refuse requests which will inevitably ensue once the present prohibitions are lifted.

It is only a small but very vocal group of leaders who wish to allow broad participation by Federal employees in partisan politics.

Furthermore, the safeguards in this bill to inhibit abuse of official authority for partisan political purposes are not adequate. Proponents of the bill are fond of telling us not to worry, that the rights of civil servants will be protected by a Board on Political Activities which will promptly adjudicate violations. I submit that adjudicating instances of indirect or subtle coercion is like trying to put one's fingers on a greasy marble.

The fact is that Federal employees enjoy a number of freedoms to participate in the elective process, all of which are listed in the Federal Employees Political Participating Manual which all the civil servants have ready access to.

In the name of "second-class citizenry," proponents of the bill seek not a modification of the present prohibitions but a situation where anything goes. At the same time they stress that retention of the merit system is crucial to the survival of a nonpartisan civil service. This is just like being just a little pregnant. One really cannot have it both ways.

Most importantly, the Members' constituents and mine are fed up with partisan politics interfering with the administration of good government. How is this going to be improved when an IRS agent investigating tax fraud in the district is also soliciting voluntary contributions

from the same community in order to run for Congress?

The CHAIRMAN pro tempore. The time of the gentleman has expired.

Mr. DERWINSKI. Mr. Chairman, I yield 1 additional minute to the gentleman from Maryland.

Mr. GUDE. Is this really the time to open the floodgates to all-out politicking by Federal employees? The answer, judging from the telegrams I received this morning, is "No." I have one telegram here from an outstanding organization, a large civil service organization, the National Federation of Federal Employees, that is opposed. And I should like to read just a couple of excerpts from a telegram from the National Civil Service League, which has been the watchdog of the merit system since 1883 when it was responsible for the passage of the original Pendleton Act. They say:

We opposed H.R. 3000 and find H.R. 8617 little improved. It goes much too far in unleashing Federal employees for partisan activities which would undermine the integrity of the merit system and could lead to a rebirth of many of the aspects of the old spoils system. The League, the American Society for Public Administration, and other responsible groups with memberships well over 30,000 are now reviewing present Hatch Act restrictions to suggest revisions at a later date. National Civil Service League strongly urges the Congress not to change Hatch Act at this time.

It is signed by Mrs. Kathryn H. Stone, chairman of the executive committee.

Mr. CLAY. Mr. Chairman, I yield 2 minutes to the gentleman from Illinois (Mr. MIKVA).

(Mr. MIKVA asked and was given permission to revise and extend his remarks.)

Mr. MIKVA. Mr. Chairman, the heart of the issue which Congress must decide is what restrictions, if any, on political activity by public employees ought to be retained.

What is the appropriate standard we should employ in reaching that fundamental policy decision? It seems to me, Mr. Chairman, that when we are talking about stripping people of their freedom to participate in the political process, any proposed restrictions must be supported by a rational connection between the nature of the restriction imposed and a preeminent national interest which will clearly be threatened otherwise.

In the context of the Hatch Act, it seems to me that there are commonly three interests cited which the Hatch Act restrictions are presumed to protect. The interests of the public employees, who must be protected against political pres-

ures; the interests of the public in a professional civil service system in which employment decisions are based on merit, not on political regard; and third, the interest of the public in the integrity of Government services which ought to be provided equally to all citizens regardless of their politics.

If we are to legislate rationally and fairly, we ought to hold each of the proposed restrictions on political freedom up against these three agreed interests to see if restricting the political freedom of public employees will in each instance result in greater protection of one or more of these agreed interests. If a proposed restriction fails this test, it is not justified and ought not be imposed by Congress.

The restrictions against coercion and abuse of office which are contained in the present law clearly pass the test. They are necessary in order to protect all three interests—the employees themselves, the integrity of the merit civil service, and the impartial availability of Government services to the public. All three of the bills before the committee retain and strengthen those justified restrictions.

When we move to the area of voluntary political activity, it becomes much more difficult to justify restrictions. The present statute is obviously indefensible on this score. How can it possibly be necessary for the protection of the employee or the public to prohibit an accountant or a secretary who happens to work at HEW rather than at IBM from spending his or her time after work passing out bumper stickers for the candidate of his or her choice?

These kinds of restrictions on political involvement cannot be justified on any of the three grounds set out earlier.

They do not serve to protect the employee, since these are voluntary activities which he need not engage in if he does not happen to be interested in politics, which undoubtedly would be the case with the large majority of public employees just as is true of private employees. Whatever danger there may be of coercion by superiors is more properly handled by specific prohibitions against such coercion, as the present law now contains and as all three bills before the committee would continue.

These restrictions do not serve to protect the integrity of the civil service merit system. It is logically inconsistent to suggest that civil service jobs would be doled out as political rewards without the Hatch Act, for the Hatch Act only applies once the individual is hired.

There is nothing in the present law to prevent Government agencies from using Government jobs as patronage, except the civil service merit system which would continue regardless of the Hatch Act. Most importantly, the civil service system protects the employee from political firing once he is hired, precluding any unstated pressure on employees to engage in political activity if the Hatch Act restrictions were lifted.

The third test proves negative as well. Misuse of office to influence voters would continue to be prohibited irrespective of what kinds of political activity are permitted during nonworking hours.

In framing legislation which restricts the political freedom of public employees, in the interests of fairness and of responsible exercise of our legislative power we should employ the narrowest specificity necessary to do the job. But I also recognize, Mr. Chairman, the need to be realistic.

Unquestionably there are some risks in removing virtually all restrictions on political activity by public employees. We should provide as much protection as we can against coercion and abuse of office. We ought not only to retain those provisions of the Hatch Act which deal with coercion and undue influence, but we also ought to strengthen them. This bill does that.

One of the most serious weaknesses of the present Hatch Act is its potential for selective enforcement—even politicized enforcement. A case in point was described by Philip Shandler, a writer for the *Evening Star*. In an article in 1972 he pointed out the inconsistent enforcement of the criminal provisions concerning solicitation of political contributions in two cases. In the first case, involving improper solicitation by National Guard employees in North Carolina, the Civil Service Commission referred the case to the Attorney General for prosecution and criminal action was taken. But in a subsequent case involving solicitation by GSA officials for a Republican political affair, no prosecution was undertaken by the Department of Justice.

This bill is truly reform—it enhances the franchise and that really is the best protection for both to Federal employees and the democracy.

Mr. Chairman, I do not know that there are many Members of this House who have greater reason to be hostile to patronage than I do. I fought my way into the Democratic Party of Illinois in the city of Chicago against the patronage apparatus. I have had occasion to continue to fuss with it over the years. I do not like patronage. I never have.

But I do not think opposition to this bill has anything to do with patronage. As I have listened to my good friend and colleague, the gentleman from Illinois (Mr. DERWINSKI), I have to say with all due deference I disagree. The Hatch Act so protects the Federal employees that we have protected them right out of their rights.

We started out with a very narrow franchise in this country. A voter was required to be white, male, a landowner, and over 21 years of age. Over the years we have enhanced that franchise.

We have, after protecting women for so many years, finally allowed them to vote.

We have, after protecting blacks for so many years, finally allowed them to vote. We have, after protecting the 18-year-olds for so many years, finally allowed them to vote.

We have, after protecting the non-property owners for so many years, finally allowed them to vote.

But in each instance the same fear was raised, that somehow by universalizing the franchise we were going to create a monster, we were going to create some kind of tiger that will get out of control. I must confess that sometimes the fruits of democracy are frightening to behold but compared to the alternative I would like to stay with democracy.

We are talking about a large group of American citizens who are made second-class citizens out of a zeal to protect them. I think we ought to rededicate and redirect and redistribute that zeal. I am for this bill because it continues the real protections but it also recognizes that with the passage of time and with the incrustations of all the regulations that have been adopted, we have allowed a situation to develop here where a great many people are denied some part of the franchise. The time has come to enhance the franchise for those people.

Mr. DERWINSKI. Mr. Chairman, I reserve the balance of my time.

Mr. CLAY. Mr. Chairman, I yield 2 minutes to the gentleman from Illinois (Mr. SIMON).

Mr. SIMON. Mr. Chairman, I share the Illinois background with the gentleman from Illinois (Mr. MIKVA) and with the gentleman from Illinois (Mr. DERWINSKI) and the gentleman from Illinois (Mr. HYDE). All four of us served in the Illinois General Assembly together.

I was one of those who voted—and voted pretty consistently—for bills that would have stopped the abuses of the patronage system in the State of Illinois, but it seems to me that the bill the gen-

tleman from Missouri now has before us is one that has a middle ground, that grants certain employees some fundamental rights that court decisions ought to be giving them but which have not been given them. So we have here the opportunity today to do that.

The distinguished gentleman from Maryland (Mr. GUDE), for whom I have high regard, mentioned that this bill will un-Hatch the Federal employees. I do not think it does that at all. It maintains the present protections for Federal employees but says Federal employees can participate in our process.

My belief is that we are going to be richer for that participation. We assume that many of the talented of our Nation enter the Federal service. That is certainly what we want to encourage. If many of the most talented of our Nation enter Federal service, do we want to say that our political processes are denied these talents? I do not think we want to make that assertion. I think it is unsound and unwise, in addition, to not adequately protecting the rights of those who serve in the Federal civil service.

Mr. Chairman, I support the bill. I think it is a reasonable middle ground.

Mr. CLAY. Mr. Chairman, I yield 5 minutes to the gentlewoman from Colorado (Mrs. SCHROEDER).

(Mrs. SCHROEDER asked and was given permission to revise and extend her remarks.)

Mrs. SCHROEDER. Mr. Chairman, the Hatch Act was enacted in 1939 principally in order to protect Federal employees against coercion to participate in political activities.

At a time when the competitive merit system was just beginning, this type of political exploitation of Government workers resulting in a "spoils system," was perhaps a potential danger. I say "potential danger" because, to my knowledge, no substantiated charge of such political coercion was made either in 1939 or this year during the subcommittee hearings on the legislation before us today.

In any case, the competitive merit system has grown in strength and influence until now in 1975, fully 70 percent of Federal employees are under its protection.

The system, then, is much less susceptible to political pressure now than when the Hatch Act was passed. Nevertheless, H.R. 8617 adds to and strengthens the features of the Hatch Act which protect employees against coercion by spelling out for the first time exactly what practices are prohibited.

Therefore, I do not believe allegations that H.R. 8617 would tamper with the merit system are supportable.

Over the years the Hatch Act has disfranchised millions of Americans from one of our most precious rights—the ability to participate fully in its electoral process. In fact, because it is so vague, the Hatch Act has cowered some Federal employees into not doing things that are totally permissible—such as signing their letters to their elected representatives in Congress. As someone who comes from an area with more than 25,000 Federal employees, this problem hits home.

It is now time to bring back the first amendment for Federal employees. There is no reason why 2.8 million Americans who happen to be Federal employees should not be able to become involved in political activities as long as it does not interfere with their duties as Federal employees. H.R. 8617 would restore this basic right to Federal employees.

Let me sum up by making a statement which I think describes the present status of the Hatch Act. It was passed in order to protect Federal employees from politicians. It has been retained in order to protect the politicians from Federal employees.

Mr. CLAY. Mr. Chairman, I yield 2 minutes to the gentleman from New York (Mr. KOCH).

(Mr. KOCH asked and was given permission to revise and extend his remarks.)

Mr. KOCH. Mr. Chairman, first I would like to express my appreciation to the chairman of the subcommittee for having brought this bill to the floor. It was a piece of legislation that originally, in more basic form—and it is far better today than it was when it was first introduced—was first before the House Administration Committee which lost the jurisdiction, and fortunately lost the jurisdiction, to a committee that was supportive of this legislation and has carried it to a point where we hope today to see it enacted into law.

The reason I stand in the well before the Members supporting the legislation and commending the gentleman from Missouri (Mr. CLAY) chairing the subcommittee is that I feel very strongly about this legislation. There are about 100,000 Federal employees in the city of New York. There are several million in the country. To deny them first-class citizenship really is an outrage. First-class citizenship includes the right to full participation in our political processes.

I know, having spoken to some people who were not supportive of the legislation originally, but who I think are to-

day, that one of the arguments offered is: "Well, you know, if we have this kind of legislation everyone in the Postal Service might run against every Member of Congress, and after all, they have direct contact with the voters."

I think most people today would agree that if they wanted to do that, that is their right, but surely that would not be the situation. But it is not a legitimate consideration as to whether someone runs or does not run against a Member of either body. The basic reason for passing this bill is that it will provide first-class citizenship for all our people, now denied our Federal employees.

We rectified the situation last year vis-a-vis municipal and State employees some of whom were covered by the Hatch Act, and they were taken out from under its coverage so that they now are first-class citizens in the sense I outlined. I think we should extend that principle to our Federal employees as well.

So, Mr. Chairman, I am extremely pleased that H.R. 8617, legislation which I am cosponsoring to remove political restrictions against Federal employees under the Hatch Act, is before the House today to be voted upon. I would like to again commend our colleague, BILL CLAY, of Missouri, the chairman of the Subcommittee on Employee Political Rights, for his leadership in bringing this bill, the Federal Employees Political Activities Act of 1975, to the floor. More details are:

In January 1973, I introduced legislation to restore the political rights of Federal, State, and local employees while still protecting them at work from financial solicitation and other political harassment. A provision of last year's campaign reform bill—the Federal Election Campaign Act Amendment of 1974, Public Law 93-443—removes most Hatch Act restrictions against State and local employees. As of January 1, 1975, the nearly 3 million State and local employees can serve as officers of political parties and as delegates to the national conventions, can solicit votes on behalf of candidates, and so on down the long list of previously prohibited endeavors under the Hatch Act's dictum of "no active participation in political management or in political campaigns." The restrictions against coercion of fellow employees, solicitation of funds on-the-job, or any other abuse of official authority to influence elections remain in force, as they should.

As a member of the House Administration Committee last year, which drafted the campaign reform bill, I was pleased to support and assist in the adoption of this provision.

I withheld from offering an amendment to include Federal employees as well in order to assure the adoption of the State and local provision. It was then and is now my hope that the Congress will also restore the political rights of Federal employees.

According to the Library of Congress and the Joint Committee on Reduction of Federal Expenditures, there are approximately 2.8 million Federal civil servants and postal employees in the United States today. The District of Columbia and seven States—California, Illinois, Maryland, New York, Pennsylvania, Texas, and Virginia—each have more than 100,000 Federal employees. New York City alone has over 98,000. Since 1939, these Government employees have been largely prohibited from participating actively in partisan political activities by the Hatch Act.

These 2,800,000 Federal employees are no less deserving of equal rights under the law than are State, local, and private sector employees. Congress should clear up the obvious discrimination and inconsistency in the law.

It is high time that Federal employees are considered old enough and intelligent enough to participate fully in the process of elections. This country has no right to make its public employees second-class citizens. But the Hatch Act, by limiting their political activities, has effectively put them into that category. The nature and scope of activities prohibited, as well as the sheer numbers of persons affected by these restrictions, have led various commentators to criticize the Hatch Act as being at variance with the first amendment guarantee of freedom of political expression and the American commitment to participatory democracy.

The constitutionality of the Hatch Act has been challenged in the judicial arena. In July, 1972, the U.S. District Court for the District of Columbia—National Association of Letter Carriers against U.S. Civil Service Commission—ruled that the Hatch Act is "constitutionally vague" and has a "chilling effect," because many civil employees do not know either if they are covered or what they are prohibited from doing. According to the court, many persons did not engage in any political activity out of fear, rather than because they had to.

This decision, if left, would have repealed the Hatch Act.

However, the Supreme Court, in June 1973, reversed the decision by a 6 to 3 margin. But the Court still emphasized that "Congress is free to strike a different balance if it chooses."

In 1966, Congress created the Commission on Political Activity of Govern-

ment Personnel, known as the Hatch Act Commission, to study all Federal laws restricting political participation by Government employees. In its final report, in December 1967, the Commission noted the need for substantial reform of the Hatch Act, particularly in the areas of clarifying its vagueness and reducing its application to the fewest employees. As the Commission noted, most Government employees are so confused by the more than 3,000 specific prohibitions issued over the years by the executive branch and have so little idea what they are permitted to do that they tend to avoid taking part in any political activity at all.

Existing restrictions on the political activities of Federal employees are, in my judgment, unfair and long overdue for revision. But at the same time, we must protect the neutrality of the Government bureaucracy. We must also guard against possible coercion directed against public employees to participate involuntarily in politics. The solution is to replace the Hatch Act with legislation that contains adequate safeguards against abuses while granting Federal employees their rights to participate as private citizens in American political life.

H.R. 8616 would accomplish the goal of removing political restrictions against Federal employees while at the same time prohibiting coercion by or against those employees. I urge our colleagues to support this important bill.

Mr. CLAY. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the debate on this important piece of legislation has come to a close. The arguments have been vigorous and informative. The opponents have presented their case in a scholarly and sober manner. But I think it is obvious that the proponents of this legislation have effectively and articulately rebuffed the fears and contentions advanced by those who oppose the bill. Hopefully, we have resolved any reservations they might have had.

It has been shown that the passage of this bill will in no way threaten or destroy the merit system. It has been demonstrated that Federal employees will enjoy more protection against coercion and intimidation under the provisions of this bill than exists under the present Hatch Act. This bill in no way will encourage or permit the politicizing of the Federal work force. Nor will it compromise the integrity of our merit system to the whims of elected and appointed officials.

Mr. Chairman, our committee started

with two major objectives in mind. Both were desirable and both of primary concern in our attempt to fashion this legislation.

First, was our deep concern for extending to all citizens their constitutional rights of free speech and association. For we know that a democratic society is only as strong, only as vital as the extent of active citizen participation in our political process.

Second, was our determination to assure the most honest, most impartial, and most efficient transaction of the public's business. This bill accomplishes both objectives. We have been able to reconcile constitutional freedom with controls against political excesses. We have struck that delicate balance between citizen participation in the political process and protection of honest and impartial public service.

We have documented that this country except Japan—imposed by the Army is the only democratic society in the entire world which imposes such stringent restrictions on their Government employees. It has always puzzled me that those who vigorously oppose the extension of constitutional rights can do so in such lofty terms. Invariably they wrap themselves in the American flag, quote the Founding Fathers, sing the national anthem and march out some self-written mandate for them to save the republic.

Mr. Chairman, the argument here is clear and precise. You either believe that the constitutional framers intended to guarantee freedom of speech to all Americans or you do not. You either believe that Federal employees are just as honest, just as law abiding and just as responsible as their counterparts in the private sector or you do not. You either believe that 2.8 million American citizens are just that in every sense of the word or you believe that they are second class.

I believe it is time for this Congress to stand up and tell the world that the Constitution and the Bill of Rights applies to every man, woman, and child in the United States. I believe it is time for us to make it possible for all Americans to enjoy the full meaning of the first amendment which says:

Congress shall make no law prohibiting the free exercise of speech, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Mr. DERWINSKI. Mr. Chairman, I yield such time as he may consume to the gentleman from New York (Mr. CONABLE).

(Mr. CONABLE asked and was given permission to revise and extend his remarks.)

Mr. CONABLE. Mr. Chairman, in 1826 Benjamin Disraeli wrote that—

All power is a trust, that we are accountable for its exercise, that from the people and for the people all springs, and all must exist.

What we are considering here today is whether or not this Congress is going to use its power wisely, and whether or not it is going to reduce the trust of the American people.

This is a time when the Congress is under particular public attention. Recent polls have revealed that serious erosion of regard by the public already has occurred. It is ill time for Congress to be undermining legislation that has, for 36 years, had high public trust and regard.

The fact that Federal employees are under the Hatch Act for decades has been accepted as a symbol of Government integrity. It has been endorsed by the American people as one of the foundations of our governmental system. Today, we are considering a measure that would attack that solid rock of integrity. It would inject the undesirable atmosphere of political activity into functions that depend for their public acceptance on impartiality.

The advocates of this drastic change in the operation of the Federal merit system claim they are acting on the basis of overwhelming demand. They claim the present act somehow deprives Federal workers of their just and due rights to participate in the system.

Nothing could be further from the truth. In the first place, a National Federation of Federal Employees questionnaire revealed that of the 30,000 who replied, 89 percent supported continuing the Hatch Act unchanged, and only 1 percent wanted it repealed.

Broad participation in the political process, on a voluntary basis, by Federal employees in many areas of the elective process is permitted by the existing law.

I stress the term voluntary. It gets to the heart of the matter. Where does the support for this bill arise? From the leaders of Federal employees' unions, who see in it an opportunity to forcibly broaden their base of power. Voluntary participation often depends on the particular definition of the organization involved. We have some major political forces today who claim to collect so-called voluntary political contributions from workers' paychecks. The workers well know that it is like the old Army game where the officer says I want three volunteers—you, you and you.

Under present law, Federal employees can participate as citizens under truly voluntary conditions, which are not job

created. They can obtain work, advance to the best of their capabilities, without seeking political blessings, or performing political favors.

When the Hatch Act was being debated in the House, Representative Rees of Kansas said:

Members of Congress, I just do not believe we can make this legislation too strong. The time has come when this thing must be stopped. Let us do it now, once and for all. Let us see to it that each and every individual who has anything to do with the disbursement or administration of public funds shall have nothing to do concerning the appointment or election of any individual to public office. When you permit the use of public funds, as well as political appointments, to influence and control the elections of individuals to high places, who are to direct the policies and affairs of our government—at that time you are striking at the very foundation of government itself.

There has been a great push from some quarters for massive so-called public service jobs. One need only recall the vicious political actions during the days of the WPA to see clearly that the bill before us today would open up these jobs to political patronage, pressure and persecution. We do not want to return to the days when Federal workers, and those receiving Federal income support, were required to change political registration, or to contribute sizable portions of their meager payments to local political bosses.

We have a strong kickback law on the books. There is no discernible difference between requiring financial contributions, and requiring political activities on what amounts to a nonvoluntary basis.

This bill has been touted as one offering opportunity to Federal employees. It has been described as upgrading their citizenship and equalizing their rights. In reality, it would simply open the door to abuses, legalize politicizing of the civil service, and would invite coercion of recipients of Federal funds.

The civil service workers do not want this bill. If the facts were known, I am sure the American people do not want this bill. This Congress runs a great risk in passing this special interest legislation for the benefit of the few to the detriment of the many.

Proponents of this questionable bill scoff at the idea that it would lead to inevitable abuses and corruption of the Federal bureaucracy. Past experience, only three and a half decades ago, however, demonstrate that our bureaucracy is indeed quite vulnerable to both blatant and subtle political pressure and manipulation. At the close of my remarks, I would like to insert into the RECORD some examples of the actual

abuses that the Hatch Act was designed to curb.

I urge my colleagues to strike a blow for good government today and vote down this attempted power grab, a first step toward destruction of 36 years of impartial Federal performance under the Hatch Act.

The material follows:

Remarks of Congressman Taylor of Tennessee on July 20, 1939, during debate on passage of the Hatch Act (page 9598 of the *Congressional Record*)

... (I) f the passage of this measure will secure those on Government relief from becoming the prey of political parasites and highjackers by interfering with the "liberty" to coerce and exploit, then that is the strongest possible argument for its speedy enactment ... to cover such practices as ... the sale of the new "celebrated" Democratic campaign book. ... Thousands of books were printed and were supposed to have been autographed by no less a personage than our present Chief Executive. Agents skilled in the art of high-pressure salesmanship were engaged to travel throughout the Nation and sell these books to those equipment dealers and contractors who had been given PWA, WPA and other Government contracts. The agents were supplied ... by the heads of Government agencies right here in Washington ... with data as to the amount of business each material and equipment dealer

and contractor had received and the number of books each was expected to purchase was based on the amount of business he had enjoyed.

Before they were anointed and sent on their scurvy journey, these solicitors were assembled in Washington and furnished a list of the lambs to be shorn, and given a letter signed by the head of the Democratic National Committee authorizing them to make the necessary contacts.

The agent who worked Tennessee, and when I say "worked" I mean precisely what I say, made at least four stops in my State. ... When he reached Knoxville he registered at one of the best hotels and immediately summoned to his suite those whose names were furnished him in Washington. ... They came singly, and when Mr. A, for instance, was ushered into the presence of the shearer, he was adroitly reminded of the business he had received from the Government and the prospect of future favors was dangled before him. He was then shown the Democratic campaign book—a veritable masterpiece of art—and told that he was expected to purchase ... several books, the number varying in proportion to the amount of government business he had enjoyed, and that the price of the book was only a measly \$250 per copy, the victim's enthusiasm was greatly dampened ... at the very same time ... the same books were on sale in second-hand book stores here in Washington at 30 cents a copy.

CONGRESSMAN SPRINGER OF INDIANA, JULY 20, 1939, PAGE 9604 OF THE CONGRESSIONAL RECORD

"Quite a large number of instances have

been reported that the WPA supervisor stood just outside the room in which the election was then being held, and with his book in his hand he gave to these unfortunate men and women the last word of instruction and his last expression of intimidation 'to vote the straight ticket or the voter need not come to work the next morning.' In many instances where voting machines were used, the WPA workers and those receiving relief were falsely told that the supervisor who stood on the outside of the polling place could positively tell by the ring of the bell how the voter was voting and whether the voter was following the last-minute instructions. ... The relief rolls have been filled to capacity in many places before the election and the number greatly reduced after the election was over, and in many instances, wholesale discharges of WPA workers were made immediately after the election day."

"THE SHEPPARD REPORT," U.S. SENATE, 76TH CONGRESS, 1ST SESSION, REPORT NO. 1, JANUARY 3, 1939

KENTUCKY

"The findings of the committee based on the evidence before it show that the amount received for Governor Chandler's campaign from State employees whose salaries had been partly or wholly derived from funds paid by the U.S. Treasury, was in the neighborhood of \$70,000. The findings of the committee ... show subscriptions intended for Candidate Barkley's campaign committees were made not only by employees of the WPA in Kentucky, but also by employees in this State of the National Bituminous Coal Commission, the Bureau of Internal Revenue of the Treasury Department, the Bureau of Accounts of the Treasury Department, the Home Owners' Loan Corporation and the Federal Housing Administration ... amounting to about \$24,000 in all.

It was further disclosed by evidence before the committee:

1. that in Pulaski and Russell Counties ... located in the second district of the WPA for the State of Kentucky, there was a systematic canvass of all certified workers instituted, whereby lists of all workers were copied from official records on forms with columns headed; "Name and address," "Identification No.," "Mark," "Number in family," and "Remarks."

2. These forms were mimeographed ... on the back of WPA stationery.

3. ... the said canvass was instituted by the (area WPA engineer's) foreman to have them filled out, to get the political affiliation of the workers ... whether, in the opinion of the foremen persons so checked were favorable to the WPA program and to Senator Barkley.

7. ... the investigation discloses that in many instances men known to hold views contrary to Candidate Barkley were discharged, there being always assigned some reason other than political and that being denied.

9. That the efforts of the entire (WPA) supervisory force were coordinated in a plan to place in the hands of the Barkley campaign committee chairmen for each of the 32 counties a list of the names and addresses

of the 17,200 workers . . . of all legal voters in the respective families, whether or not they were registered . . . had moved since registering, and precinct where registered.

12. That this plan was instituted and carried out at the request of Thomas S. Rhea, of the State headquarters of the Barkley campaign committee in Louisville.

13. That the original mimeographed forms . . . were then placed in the hands of the respective Barkley campaign committee chairmen for the entire 32 counties in WPA district No. 1 for the State of Kentucky.

TENNESSEE

The report of our investigators in Tennessee shows that there was a vigorous effort throughout the State to raise campaign funds by contributions from Federal employees, in behalf of the coalition group, to wit, Cooper Stewart-Hudson ticket, including not only those having civil service status, but those having relief classification as well, with circumstances in certain instances indicating intimidation and coercion . . .

Such employees included not only certified and nonrelief workers of WPA, but certain employees of other Federal agencies, such as employees of the Soldiers Home at Mountain City, Tenn., employees of the Postal Service, the Bureau of Internal Revenue, the Bureau of Public Roads and other governmental agencies; . . .

That poll-tax receipts, which are prerequisite to voting by persons between the ages of 21 and 60 years, were frequently purchased in bulk by friends of candidates for office on both sides for the purpose of influencing votes and voting; and

That WPA labor and materials, paid for with funds appropriated by the Congress for emergency relief purposes, namely, farm-to-market roads, have been used in the construction, improvement and repair of private drives and roadways under circumstances and conditions giving rise to a fair inference that such use may have been suffered and permitted for the purpose of influencing votes and voting. . . .

PENNSYLVANIA

Evidence from its investigators that owners of trucks used on WPA projects were solicited for \$100 each in Carbon County, Pa.

Eighteen relief workers on the WPA project near Wilkes-Barre were ordered transferred from this project, which was near their homes, to a project located some 35 or 40 miles from their homes. The investigators stated that the reason for this transfer action was that these workers were wearing Republican buttons at work and had registered Republican.

Large numbers of WPA workers were mailed postal cards requesting them to call at Democratic headquarters on particular dates at different hours . . . evidence that lists had been prepared for relief workers at the WPA headquarters in their county and it is believed that these lists were used in mailing out the postal cards . . . when these relief workers called at the Democratic headquarters they were solicited for campaign contributions, in some cases the amount requested being \$100 . . . the Democratic leader who was interviewing these

relief workers and to whose office they were sent, was employed by the Unemployment Compensation Service, which aids in administering the social security law . . . and was on leave from his official position, working for the Democratic Party . . .

This is further evidence . . . that numerous WPA workers, including timekeepers, laborers and others, even women on sewing projects, were requested and ordered to change their registrations from Republican to Democratic with threats of the loss of their relief employments if they refused to comply with the demands; and it was further disclosed that numerous persons were separated from their employments with WPA shortly after their refusal to accede to such and similar demands.

ILLINOIS

Evidence . . . showing that between March 21 and April 20, 1938, some 450 additional men were employed in district No. 10, embracing Cook County, that most of them were dismissed the day following the primary election, that some 70 of these men did no highway work at all during the period they were on the rolls but upon reporting to work were instructed to go back to their respective precincts and canvass them in behalf of the Horner-Courtney-Lucas ticket. These 450 men cost \$23,268.10 . . . all of these men had their respective work card either signed or initialed by Charles Schwartz, who was campaign manager in northern Illinois for the . . . ticket.

Mr. DERWINSKI. Mr. Chairman, I yield myself 1 minute.

Mr. Chairman, one point keeps reappearing in the arguments of the advocates, and that is that somehow this 36-year-old Hatch Act deprives individuals of their constitutional rights. So again I make the point that the Hatch Act has not been vigorously challenged in the court. One major Supreme Court ruling on the subject upheld the Hatch Act. The charge that it is somehow depriving an employee of his constitutional rights just falls from lack of evidence.

Another point we must keep in mind is that Federal employees cannot serve both an impartial civil service and a partisan political party. And at a time when there are so many people who are skeptical of the entire structure of government, I say it is most ill-timed to put the onus of partisanship on the millions of Federal employees and add further suspicion in the public mind to the impartiality of the Federal service.

We are going to have other very fascinating amendments. My opinion is that if they are all accepted it is still a bad bill.

I would certainly hope that this fine, objective, high level debate up to this point will continue throughout the amendment stage.

Mr. Chairman, I yield 1 minute to the gentleman from Texas (Mr. GONZALEZ).

(Mr. GONZALEZ asked and was given permission to revise and extend his remarks.)

Mr. GONZALEZ. Mr. Chairman, I have some questions that I would like to ask of either side if they have the time available. The question I have has reference to the fact that the merit system has been suborned. It has been, in my opinion, irretrievably "unmerited" through the so-called Malek memorandums and the complete politicalization of the system in the last 3, 4, or 5 years.

My question has to do with how will this bill go about making the merit system hold. It is directly related to paragraph 7327, on page 8, where there is provision for a board on political activities of Federal employees. This seems to kind of perpetuate political institutionalization of Malek.

Would this not tend to institutionalize the Malek memorandums? It is within the Malek manual, is it not?

Mr. DERWINSKI. Mr. Chairman, if the gentleman will yield, the gentleman from Texas is making a fine point.

Mr. GONZALEZ. I am merely asking a question for information.

Mr. DERWINSKI. The answer to that question, if there is any, would have to come from the author of the bill.

Mr. CLAY. Mr. Chairman, if the gentleman will yield, as I understand the question, I think the gentleman is confusing two things here. This bill has absolutely nothing to do with the merit system. The Civil Service Commission still has jurisdiction over the merit system.

We are talking about the Hatch Act, which presently prohibits political activity on the part of Government employees. That is what we are dealing with. This bill has nothing to do with the merit system or the Malek plan or any other plan.

The CHAIRMAN pro tempore (Mr. EVANS of Colorado). The time of the gentleman from Texas (Mr. GONZALEZ) has expired.

Mr. CLAY. Mr. Chairman, I yield 2 additional minutes to the gentleman from Texas (Mr. GONZALEZ).

Mr. GONZALEZ. Mr. Chairman, I thank the gentleman from Missouri.

In connection with this Board, the Board is tied in with the Civil Service Commission. It mandates that the Civil Service Commission shall contract for or obtain whatever employees are necessary to the chairman of the Board. It mandates that the GSA provide, without any limitation, space for the Board.

Now, is that not tying this in with the merit system?

Mr. FORD of Michigan. Mr. Chairman, will the gentleman yield?

Mr. GONZALEZ. I yield to the gentleman from Michigan.

Mr. FORD of Michigan. Mr. Chairman, the gentleman from Texas raises a good point, but I think the chairman of the subcommittee has already answered the question.

The Malek memorandum is a part of an ongoing investigation which is being conducted by this committee at the present time under the chairmanship of the gentleman from North Carolina (Mr. HENDERSON). The committee is just dealing entirely with that matter in terms of public violations of the civil service laws of the Federal Government. Violations of the civil service law are normally supposed to be enforced by the Civil Service Commission.

We are going beyond that with the investigation to see whether they have been doing that.

There are two ways one can get into trouble. One can violate the civil service laws or one can violate the merit system regulations by activities which may tend to be political. In addition to that, even if one is as clean as a hound's tooth with regard to the merit system or the civil service laws, one can still be in violation of the existing Hatch Act.

All this bill seeks to do is to relieve these people from that second burden when they are acting outside the scope of their employment under the Civil Service Act. It does not, in any way, relieve them from the responsibility to refrain from political activities consonant with the restrictions in the Civil Service Act itself or in the merit service, as the gentleman referred to it.

Mr. GONZALEZ. Mr. Chairman, I thank both gentleman for their responses.

Mr. O'NEILL. Mr. Chairman, I rise, not in a partisan manner, but on the merits of this important legislation. I strongly support this bill and urge all my colleagues on both sides of the aisle to vote "aye."

No evidence exists to suggest that political activity in which employees participate freely, voluntarily, and in a manner that is distinct from their official duties, is harmful. No evidence exists to suggest that voluntary political activity compromises the effectiveness of the Federal work force. This bill does not in any way take away from the strength of our merit system.

In fact, it is the involuntary or coerced activity which must be prevented, not voluntary activity, and this bill would strengthen prohibitions against coer-

cion by establishing a board responsible for adjudicating cases, leaving the Civil Service Commission free to investigate violations and conduct education programs on permissible political activity.

The Civil Service Commission and its employees have made significant progress in insuring that the merit system is conducted in a nonpartisan manner—one in which we can all take pride. These conditions did not prevail in 1939, when the Hatch Act was enacted.

But this is 1975. The Hatch Act in 1975 is an anachronism. We should and must encourage Federal employees to exercise their right of voluntary political participation.

I heartily commend the gentleman from Missouri, my friend, BILL CLAY, and his distinguished subcommittee in reporting this legislation. H.R. 8617 provides a careful and effective balance between the political rights of Federal employees and the protection of the public. The built-in safeguards strengthen the prohibitions against involuntary activity, which is the primary source of abuse and major reason for the enactment of the Hatch Act, 35 years ago.

The kind of reform of the Hatch Act envisioned in H.R. 8617 merits our support and I urge its immediate adoption.

Mr. RHODES. Mr. Chairman. some 36 years ago the Congress took action to take the spoils system out of the operations of the Federal civil service.

Today we are considering H.R. 8617, which would be a giant step backward. This bill represents a peculiar version of post-Watergate morality on the part of its advocates. At a time when integrity in Government is a crucial concern of millions of Americans, we have before us a measure that would destroy the progress made by the Hatch Act.

It is important that impartiality in administration of Federal laws be maintained. This measure would invite abuses. It would provide the means for subverting Federal influence and directing it into local political contests. It would divert Federal employees from conscientious and fair performance of their jobs, by subjecting them to political pressures and influences.

The Hatch Act was considered in 1939 due to the findings of a Special Committee To Investigate Senatorial Campaign Expenditures and Use of Governmental Funds in 1938. They issued what was known as the Sheppard Report, and it detailed scandalous misuse of Federal funds and misdirection of Federal employees for political gain.

Representative Taylor from Tennessee, in remarks to the House said:

No patriotic American can read the report, detailing the sordid debauchery of the ballot hitherto unknown in this country, without a feeling of deep resentment and without a blush of shame.

No one in this country ever dreamed that the time would ever come in the United States when public money, appropriated for the alleviation of human distress, could be sabotaged and prostituted as it was in Pennsylvania, Kentucky, New Mexico, Oklahoma, and to a greater or lesser degree in every State in the Union, including the proud old State of Tennessee.

He went on to describe the methods used. WPA bosses were furnished lists of workers, with the amount they were expected to contribute beside each name. Workers making \$30 a month were asked for \$5 for the Democratic primary. The money was placed under the Democratic donkey paperweight on the desk of the project supervisor.

One of the more odious practices in vogue prior to passage of the Hatch Act was sale of the Democratic campaign book, which could be bought for 30 cents in Washington, but was proffered for \$250 by Federal agents. They canvassed suppliers of Government equipment, with lists compiled by Federal agencies of the amount of Federal business the firms did, and the number of books each was expected to purchase. Mr. Taylor noted that the "lambs to be shorn" were reminded of the stake they had in continued Federal procurement, the volume they were doing, and the obligation they had to buy the books.

Other speakers detailed many other cases of onerous pressure exerted on behalf of political candidates, by use of Federal personnel in charge of dispensing Federal largesse.

Mr. Taylor called for an even stronger bill, and told his House colleagues:

It will be urged by some that this legislation will interfere with personal liberty. Well, if the passage of this measure will secure those on government relief from becoming the prey of political parasites and highjackers by interfering with the quote 'liberty' to coerce and exploit, then that is the strongest possible argument for its speedy enactment.

The civil service was established as a merit system. Today we have the same party that was responsible for the abuses that required the Hatch Act to be passed, asking to revert to the same unwholesome climate of politically motivated civil servants. Of course, the nearly 3 million Federal workers would be a great political machine. They dispense billions in Federal funds. It takes little imagination to construct a scenario of blatant political misuse of public money should the merit system be thrown open to the ma-

chinations of local and Federal political bosses.

We have a good federal system. It has served us well for 36 years. I urge my colleagues that we do not backtrack. I call to the attention of the opposition party that they have been zealous defenders of Federal morality over the past 2 years. This bill would bring into question their motivation, and most certainly would create mistrust in the eyes of the American public. With billions being ladled out in welfare funds, food stamps, and other programs, we cannot afford the taint of political manipulation.

The supporters of this bill are using the same arguments that were used when the Hatch Act was passed. Democratic Representative Celler of New York said at the time:

I believe the bill hurts my party. It goes top far.

Events have proven him to be wrong. But, I believe that the Democratic Party would be injured if H.R. 8617 is pushed through this Congress by the large majority of that party. It would signal a reversal of political integrity, and would undo 36 years of impartial administration of Federal programs.

I urge my colleagues to vote against this incursion into the merit qualifications of the Civil Service System.

Mrs. HOLT. Mr. Chairman, today we are going to vote on H.R. 8617 to amend and, in my view, effectively to gut the protective sections of the Hatch Act. Proponents of this measure have falsely stated that this act will "restore full citizenship" to civil service employees.

As a Representative with a very considerable number of Federal employees in my district, I cannot buy this phony argument. It is based on misrepresentation of the reason for the creation of the Civil Service System in 1887 and I, for one, wish to correct that misrepresentation here and now. Every schoolchild knows that civil service was instituted following a long history of political abuses heaped on career Government workers. It sought to remove those political pressures because it was believed that they seriously compromised the effectiveness of government and the faith of the people in their Government. The Hatch Act added additional insulation from political pressures when, nearly 40 years ago, gaps in the law were filled and penalties were provided for certain types of political activity. If allowed, these activities would have cost civil servants their much needed independence from political pressure.

Sadly, H.R. 8617 seeks to strip this pro-

tection from Federal career employees. It is fully supported by politically motivated organizations gleefully anticipating their reentry into Federal offices. They believe they have the votes to pass this bill, but they do not have mine.

Mr. Chairman, supporters of H.R. 8617 have made another incredible distortion. In a recent letter, lobbying Congress, they stated that—

It (H.R. 8617) will shore up the inherent weaknesses of the law which permitted widespread political abuse from the top down during the Nixon Administration while it inhibited political counter activity from the bottom up.

There is absolutely no relation of that statement to reality. The Watergate scandal was not the domain of career government employees and I cannot help but believe that, to a large extent, the Hatch Act prevented such abuses of power from effecting the average civil service.

Mr. Chairman, while I feel strongly that civil service employees must have the right to participate in the electoral process, H.R. 8617 is a sham, a bad bill sold by snake oil merchants under false colors. I will oppose it and urge the President to veto it should it pass the Congress.

Mr. NIX. Mr. Chairman, I am a cosponsor of H.R. 8617 and I support its passage by the House as I did in committee.

I support H.R. 8617 because it permits Federal and postal employees the same right of participation in our political process that their fellow Americans have.

At the same time, this legislation protects the right of Federal workers to keep their political concerns a private matter on the job by providing an independent Board on Political Activities which will make judgments on alleged violations of this statute. Violations would result where there is political pressure on a Federal job directed against an employee, or by the employee against his superiors.

The present law and regulations as promulgated by the Civil Service Commission permit political activity at the local level by Federal employees in communities where the majority of residents are Federal employees. It also permits so-called nonpartisan political activity in these communities where nonpartisan political races take place. Therefore, this new legislation would extend to all Federal employees those rights possessed, as the result of civil service regulations, by some Federal employees in certain areas.

Geography of local nonpartisan politics will not be the basis on which Federal employees may play their full role as American citizens.

In 1939 Congress passed the Hatch Act because two-thirds of Federal workers were not members of the classified service and subject to civil service rules. The greatest worry was the WPA which provided work for so many during the Depression. The restrictions enacted then, which will still be maintained, will be prohibitions against on-the-job campaign fund solicitation and the use of Federal work time or office space for political purposes.

The restrictions which will be eliminated will be prohibitions against participation in political campaigns as a manager or candidate.

All of the civil service laws and regulations by the Commission will protect the Government against favoritism and prejudice in the running of the Government. The basic test of job performance, the basic test for promotion of the best man for the best job will remain in effect.

This is good legislation that will benefit the Federal service and allow our local communities to have the benefit of full participation in political campaigns. It is a progressive step which fits today's world. We cannot do less.

Mr. OTTINGER. Mr. Chairman, I have long advocated ending the restrictive features of the Hatch Act that deny Federal employees one of their most basic freedoms under the Constitution. In my opinion the bill that Mr. CLAY has given us, H.R. 8617, is excellent in that it would permit civilian employees of the Federal Government to participate fully in the political process, while at the same time insulating them from improper political solicitation.

Today the Federal work force is approaching the figure of 3 million individuals. There are some 200,000 persons so employed in New York State, nearly half of them in the New York City area. It is imperative that we act to extend to this group—the last remaining segment of our population to fall outside of the protection the Constitution affords regarding political freedom—the right to voice their political opinions and support their candidates for public office.

The major provisions of the bill we are considering today would redefine the meaning of political management and campaigns to permit the following activities:

First. Candidacy for service in political conventions;

Second. Participation in political meetings and primary campaigns;

Third. Involvement in the preparations for or organization and conducting of political meetings and rallies;

Fourth. Distribution of campaign materials;

Fifth. Candidacy for public office.

In the 36 years that we have had the Hatch Act a great deal of confusion has surrounded its enforcement, and this is due largely to the vagueness of its wording. Such vagueness has not only complicated the difficulties of the courts in interpreting the law, but has also permitted past administrations to compound the abuses inherent in the basic concept by incredibly restrictive interpretations. Records of the Civil Service Commission demonstrate the disparities in application of the law from one case to another and serve as proof of the need for clarification.

In Westchester County I have recently had occasion to observe the unfortunate plight of a Federal employee in a minor job who was denied the opportunity to run for elective office in a local, partisan election because of the restrictions of the Hatch Act. His situation is all the more tragic because he decided to run for office with the hope of reforming the local law enforcement administration after his young daughter was killed by a drunken, hit-and-run driver.

H.R. 8617 would end the confusing aspects of the Hatch Act by enumerating precisely which activities are not allowed under the law. These prohibitions include a ban on solicitation of political contributions by superiors and in Government rooms or buildings, and restrictions on carrying out political activities while on official duty or in uniform. Thus, higher level employees are prohibited from imposing their private political views on subordinate personnel and at the same time these subordinates may feel free to express their opinions without fear of reprisals from above.

Mr. Chairman, Government workers pay taxes. They have an unusual stake in Federal policies. To continue to deprive them of their political rights is a travesty. I am pleased to have this opportunity to cast my vote in favor of correcting the abuses created by the Hatch Act and restoring full constitutional rights to the Federal work force.

Mr. BIAGGI. Mr. Chairman, I rise in support of H.R. 8617, legislation which seeks to repeal one of the most archaic and un-American laws ever enacted, the Hatch Act of 1939. I consider it fitting that as we prepare to celebrate our Nation's 200th anniversary of independence we are about to pass legislation which will finally allow some 2.8 million Federal workers to be fully covered under the free speech and right to engage in political activities provisions of the Declara-

tion of Independence and Bill of Rights.

H.R. 8617, in effect, will repeal some of the more objectionable features of the controversial Hatch Act. The key provisions of the bill include:

The encouragement of Federal and postal employees to participate and exercise their voluntary rights to engage in the political processes of this Nation not otherwise prohibited by law;

That Federal employees, upon their own request, be granted accrued leave or leave without pay when they seek to run for elective office;

The expansion of the Civil Service Commission to investigate alleged violations of law by granting them subpoena powers;

Gives Federal employees the right to judicial review of any adverse decisions;

Establishes an independent Board of Political Activities of Government personnel whose function it is to hear and promptly adjudicate any violations of law; and

Requires the Civil Service Commission to establish educational and informational programs which will advise Federal employees of their rights under the law.

The bill also sets down specific safeguards to prevent potential abuses from occurring including a strict prohibition against the use of official authority influence or coercion with respect to the right to vote, not to vote, or otherwise engage in political activity. The bill also prohibits use of funds to influence votes, solicitation of political contributions by superior officers, and prohibits political activity while on duty.

Almost from the day when the Hatch Act went into effect there has been an effort made by Congress to revise or repeal it. History is on our side in this battle. From 1791 until 1939 Congress has gone on record on numerous occasions against implementing a blanket prohibition on Federal employees seeking to participate in the political process. As far back as 1791 a proposed amendment was defeated which would have limited the political activities of inspectors of distilled spirits on the grounds that it would have infringed upon their rights.

The effort to prevent Federal workers from losing their rights to participate in the political process continued through the 19th century. Even the landmark Pendleton Act of 1883 which established the Civil Service Commission made it clear that coercion against Federal employees would not be tolerated but their right to participate freely in the political process was to remain intact.

Many historians questioned how the Hatch Act ever was passed. A close ex-

amination of the motives of Congress in this matter showed that they were reacting to allegations of coercion among Federal employees in only 10 States and only as it affected the Works Progress Administration. No public hearings were held on the bill and there was much opposition recorded in the debate on the bill. There was little question that the Hatch Act was an overreaction on the part of Congress to a minor but highly publicized scandal. Since 1939, the practical enforcement of the act has been hampered by the more than 3,000 administrative rulings which have made this one of the most cumbersome laws on the books.

In October of 1966 the Congress established the Commission on Political Activity of Government Personnel to investigate and study Federal laws which limited the right of Federal and State officers from engaging in political activity. The Commission's final report in 1967 called for an expansion of Federal employees political participation while strengthening safeguards to protect employees from coercion. H.R. 8617 encompasses these worthwhile recommendations.

My association with the civil service system stretches almost 30 years, including 23 years as member of the New York City Police Department. I am proud to presently serve as president of the National Council of Columbia Association, an organization of some 80,000 Italian Americans civil servants. In these years I have learned to respect the system and its employees. Without question the opposition to the Hatch Act and its prohibitions against civil servants has been pronounced over the years.

The Hatch Act has no place in a nation which prides itself on being a democratic nation providing full and open government. Even countries such as Sweden, Great Britain, France, and West Germany allow their federal workers to engage in the political process. Why must the United States cling to this vestige of autocracy which is so much the antithesis of a true democracy?

Since my arrival in Congress in 1969, I have made repeal of the Hatch Act one of my major legislative priorities. I have cosponsored similar repeal bills in the past. I have introduced in each of the last 3 Congresses my law enforcement officers bill of rights which, among other provisions, will allow police officers to participate in political activities while off duty.

H.R. 8617 represents the culmination of mine and others, efforts at repealing the Hatch Act. It is a moment which millions of civil servants have been

awaiting. Our effort at passing H.R. 8617 must be successful.

This bill strikes the effective balance between a true and open democracy and an impartial and honest civil service. It contains enough safeguards to prevent the abuses which led to the passage of the original Hatch Act.

Above all this legislation is a statement of purpose. It denounces the notion that the Federal Government has a right to prevent their employees from participating in the political process in their spare time. It affirms the right of civil servants to enjoy all the freedoms provided to all other Americans except those in jail and convicted felons. It will also lay to rest the ambiguities rampant in the existing law which has thrown the entire issue of Federal employees political rights into a state of perpetual confusion.

The bill will also enhance this Nation's claim of being the most democratic nation in the world. Our claim to this has been seriously damaged since 1939 as since then we have denied almost 3 million of our citizens the right to fully participate in the democratic process of this Nation.

At this point I wish to pay a special tribute to the foremost advocate of H.R. 8617 my colleague from Missouri, Mr. CLAY. His tireless work on behalf of this bill is well known to all of us here. Extensive hearings have been held on this bill across the United States. The American people know this bill well.

Our civil service system is a viable and excellent one. We can demonstrate our support by passing this bill today, and allowing them to enjoy the benefits of democracy which has made America the great Nation it is.

Mr. RANGEL. Mr. Chairman, I rise in support of H.R. 8617, the Federal Employees Political Activities Act of 1975 as reported from the Post Office and Civil Service Committee.

As reported by the full committee, H.R. 8617 seeks to modify the Hatch Act by permitting Federal civilian and postal employees to participate voluntarily and as private citizens in the political life of the Nation; to prohibit the misuse of official authority, coercion, and certain activities involving political contributions. It establishes an independent Board on Political Activities of Federal Employees to hear and adjudicate alleged violations of the law, and establishes a strong mechanism through which the law may be administered.

I am certain that you believe as I do that the Hatch Act grossly infringes

upon the constitutional rights of free speech and association. If our democratic system is to grow and be injected with new and innovative ideas, then we must have the full participation of all of our citizens.

Far too few of our citizens exercise their right to vote. Our national statistics on percentages of registered voters who actually vote gives me cause for great distress. We must actively solicit the participation of all our people at every stage of the political process. Granting people the right to vote is only a noble beginning. H.R. 8617 seeks to advance our efforts in this field by bringing into the political arena Federal and postal employees, who for too long have been locked out.

The legislative history has been quite exhaustive on this issue. The Subcommittee on Employee Political Rights and Intergovernmental Programs held 11 days of hearings on this legislative proposal. Numerous witnesses were heard by Congressman CLAY and his subcommittee. The full committee by a unanimous vote reported this bill to the House, thereby approving the fine work their subcommittee had completed on this measure.

As we attempt to give meaning to the words in the Constitution of our land, I think we should take a pause and reflect upon what it was that our Founding Fathers were trying to achieve. I believe that if we are to fulfill their objectives of maximizing involvement in the political process, and thereby making the Constitution a living document, then passage of this bill is an important step toward realizing this dream. I would hope that when we vote on final passage, my colleagues will give this legislation their overwhelming support.

Mr. BEARD of Rhode Island. Mr. Chairman, I rise in support of the bill H.R. 8617, the Federal Employees' Political Activities Act of 1975.

One of the first and most important things that comes to my mind is that passage of this bill will provide some clarity to the Hatch Act which, I think everyone in this chamber will agree, is a mass of confusion, loaded with over 3,000 rulings issued since the act was originally passed in 1939. But, perhaps more important than any other consideration is the fact that thousands of Federal employees all over this country will be able to participate in the political and electoral process. The Hatch Act may have originally been passed by men of good faith but what we have seen over the years is a straightjacket for Federal employees instead of a protec-

tive device to insure their rights as citizens. I do not for one moment subscribe to the idea that this bill will create conditions that will place any employee under any sort of coercion or pressure to take part in political campaigns or stay clear of them. I am convinced that passage of this bill will strengthen existing protections and make it crystal clear as to what a Federal employee can or cannot do.

What is apparent to me in studying the history of the Hatch Act is that altogether too many just will not accept the reality that today's conditions are a long way from what they used to be. I would like to see us here in the 94th Congress bring things up to date with the passage of this bill.

Mr. LEGGETT. Mr. Chairman, there is no easy answer to the problem of how much political activity should be permitted to Government employees. On the one hand, because a person works for the Government is no reason why he should be deprived of the full opportunities of citizenship. On the other hand, the potential for corruption of the Government service is obvious if a Tammany Hall atmosphere were to be permitted.

To say we are trying to steer a course between Scylla and Charybdis, would, I believe, constitute describing the problem in unrealistically sanguine terms. We know for a fact that no matter what we do, we will not steer an entirely successful course between the rocks. On the contrary, we can be sure we will bash ourselves against not one but both rocks.

Inevitably, there will be some cases of corruption and undue political influence. We saw this during the late unlamented days of the Nixon administration, in which a corrupt President and corrupt underlings attempted to turn the entire executive branch into a combination campaign organization and patronage machine.

Inevitably too, there will be some cases in which dedicated and honest Government servants will be denied political opportunities they could have exercised with distinction and without conflict of interest.

In the past, we have fluctuated from one extreme to the other.

Until Teddy Roosevelt instituted reforms in 1907, the U.S. Government was virtually a spoils system. The deleterious results of this approach on the quality and integrity of the U.S. Government do not require elaboration. President Teddy Roosevelt then prohibited classified civil servants from taking part in political campaigns.

Further reform came in 1939 with the

Hatch Act, which brought us to where we are today.

The Hatch Act was and is a meat-ax approach, which throttles legitimate political activity to an entirely excessive degree.

The question before us is this: Can we devise a surgically precise bill which, while certainly no cureall, will give us more freedom and at the same time less abuse than is possible today? More specifically, has this bill done it?

At this point, my judgment is that it can be done and the bill before us does it.

One of the most serious problems is that of coercion of subordinates. The bill explicitly prohibits this, and does so more specifically and forcefully than does existing legislation.

Solicitation of contributions in return for votes, between employees, and on Federal property is also strictly prohibited.

Political activity while on duty or while in uniform is prohibited.

I believe these provisions effectively focus on the gut problems. With these restrictions in mind, a Federal employee is then free to run for elective office or to participate in a campaign for office, and his agency is required to give him accrued annual leave or leave without pay if he chooses to run.

Is this the ultimate answer? Most probably not. I fully expect that, as we gain experience, we will find it advisable to relax some provisions and tighten others. Is it a step in the right direction? In my judgment it is, and I urge its passage.

Mr. BEDELL. Mr. Chairman, I rise in support of H.R. 2617, the Federal Employees' Political Activities Act of 1975.

As an original cosponsor of this measure, I am extremely pleased that the House is today considering H.R. 8617. I commend the committee for its diligent work on this important bill. I think that they have presented us with a sound and responsible proposal which deserves prompt enactment into law.

I believe that responsible reform of the Hatch Act of 1939 is long overdue. In my view, this statute violates the rights of free speech and free association which the Constitution guarantees for all its citizens. It seems unfair to me to deny these basic rights to 2.8 million Federal civilian and postal employees. It is time to restore the right of these individuals to participate in the political life of their Nation.

At the same time, however, I am aware of the need to protect against the politicization of Federal service. The original intent of the Hatch Act, namely to prevent improper political pressure on Fed-

eral employees, is no less valid today than it was in 1939. Thus, great care must be taken to insure that while Federal civilian and postal employees are granted the right to participate in the political process, they do so only as private citizens and without involvement of their official authority or influence.

Mr. Chairman, it is absolutely essential that any Hatch Act reform legislation strike a balance between the apparently competing interests of individual freedom of expression and of a politically neutral civil service. I believe that the committee has achieved such a balance in H.R. 8617.

There are two important aspects to this legislation. First, it would permit Federal civilian and postal employees to engage in political activities voluntarily and off-duty as private citizens. And second, it provides substantive safeguards against coercion or the use of official authority to dictate political activity.

I believe that this country needs more grassroots political involvement, not less. H.R. 8617 will provide an opportunity for an important segment of our society to participate in the political process without impairing in any way the effectiveness of good government. I urge my colleagues to vote for passage of this landmark piece of legislation.

Mr. FAUNTROY. Mr. Chairman, I am pleased to rise in support of the legislation to substantially modify the Hatch Act, which presently prohibits so many Americans from being able to participate in the electoral process.

The bill, which you have before you, would establish an independent three-member Board of Political Activities, whose function would be to hear and adjudicate alleged violations of law, and it authorizes the Civil Service Commission to investigate alleged violations of law. The bill does not restore any kind of spoils system which I think is a rightful concern of this House because it prohibits coercion by an employee, as well as any abuse of the employee's influence.

Additionally, the bill prohibits an employee from giving, offering to give, soliciting, or receiving a political contribution in return for one's vote. Of course, the present prohibition on soliciting contributions in Federal facilities continues.

Finally, the bill prohibits political activity by an employee while he is on duty, or while he is wearing a uniform or insignia which would identify him as a Federal employee.

It appears to me, as the Representative of a constituency which is employed overwhelmingly by the Federal Government, that this legislation is long overdue.

The Hatch Act, in my judgment, is an unreasonable infringement on the right of Government employees to participate in democratic government. In addition to the specific prohibitions in the law itself, a maze of rules and regulations has sprung up governing the political behavior of most Federal employees and those working in local and State government programs which are partially or totally funded from Washington.

It has also led to supplemental regulations by individual Government departments and the passage of "little Hatch Acts" by State legislatures over the years.

In the 35 years since the passage of the Hatch Act, the overly broad and vague language of the act, as interpreted by the Civil Service Commission, has prohibited affected employees from running in local elections, writing letters on political subjects to newspapers, becoming a delegate to a political convention, or running for office within a political party. What was originally intended to protect Government employees from political coercion has turned into a dead hand prohibiting them from voluntarily engaging in political activities clearly protected by the first amendment to the Constitution.

Given the general vagueness of the law in several areas, the civil service and departmental regulations can be and often are generally confusing to the employee. The Code of Federal Regulations, for instance, under the section titled "Prohibited Activities"—section 733.122 (b)—states:

Activities prohibited by paragraph (a) of this Section but are not limited to. . .

Then goes on to list 13 items. The public employee must govern his conduct with reference to at least three authoritative sources of law—the act itself, the regulations, and informal rulings—all of which are ambiguously worded. Often the sources would appear to conflict with one another.

The vagueness of the current law and its attendant regulations results in selective enforcement of the act. These have led most Federal and District employees to feel constrained to "play it safe" by not becoming politically involved at any level, even in approved political activity. In its overall effect, the act infringes on the right to freedom of speech and action for the approximately 175,000 of my constituents and more than 330,000 Federal employees living in the Washington metropolitan area. It has, as can plainly be seen here in the District of Columbia, created a category of second-class citizens in partisan campaigns, relegating "hatched" employees

to minor or politically sterile roles.

At this time in our history when citizen involvement in the political process is so sorely needed, the current Hatch Act systematically excludes millions of responsible and politically knowledgeable citizens from participation. The legislation before you recognizes the basic value of the original act, and addresses itself to the abuses and vagueness of the act. It reflects the needs and realities of contemporary public service and balances those needs with the basic right of all Americans to participate in the partisan electoral process. H.R. 8617 would not weaken those provisions of the Hatch Act which prohibit coercion of Government employees for political contributions or activities and political interference with the merit system in the civil service. What is at issue in this legislation are the broad-ranging proscriptions against political management and campaigning in any form, in any "partisan" connection by any Federal employee. This bill would eliminate much of the vagueness of the act, defining permissible political activities. Precision of regulations must be the touchstone in an area so closely touching our most precious freedom.

For these reasons, Mr. Chairman, I urge support of this legislation and its speedy passage through this House with overwhelming support.

Mr. McCOLLISTER. Mr. Chairman, the Federal Employees Political Activities Act, H.R. 8617, should be enacted. We are experiencing a new awareness of the adverse consequences of governmental overregulation today. The Hatch Act is another excellent example of a good idea carried entirely too far. This is another case for deregulation, for maximizing personal freedoms by cutting back the scope of Government controls, focusing them more directly on the actual problem areas.

With the shrinking public participation in our electoral process and with mounting distrust and disapproval of government generally, it is essential that we do everything in our power to encourage citizen participation in our political system, not erect barriers to such public participation.

The Hatch Act's heavy handed restrictions on the exercise of elementary political rights may have been unimportant in 1939 when the Federal work force was much smaller. But a lot of things have changed since New Deal days. Today, the Federal Government employs over 2.8 million of the Nation's work force. As frightening as this statistic is to those of us who advocate limited Government,

it is a powerful argument for revising the Hatch Act. No longer can we pretend that the denial of political rights for Federal workers imposes a minor burden on a tiny segment of the population. Would that that was the case.

We have had detailed for us the political rights and privileges which have been denied to Federal workers. Another perspective must also be considered. In 1939, the Congress could not even imagine the fantastic growth of Government transfer payments and the monumental growth of grant-in-aid programs which have created a new class of Government clients with very definite political interests. With the exception of defense contractors, all of these individuals and organizations are free to exercise their special interests through involvement in the political process. Equity demands that Federal employees, with every bit as much at stake, both as individuals and in their capacities associated in private organizations, be granted equal access to the political process.

The potential for abuses which prompted enactment of the Hatch Act in 1939 has not disappeared. We must maintain strong safeguards against political intimidation of Federal employees. I believe this bill strikes a reasonable balance between provision of these safeguards and extension of greater political freedom to Federal employees. H.R. 8617 provides prohibitions against employees using their official authority to influence the outcome of an election or "coercing" someone to participate in political activities. It limits who can solicit contributions and where solicitations can be made. No supervisor can solicit from his employees and no solicitations can be made on Government property or in Government buildings. Federal employees are barred from political activities while on duty. The legislation establishes a three-member board to hear cases of alleged violations.

As everyone who has shown an interest in regulatory reform can attest, the status quo is hard to change. It is protected by a virtually impregnable wall of mythology about the horrendous consequences of deregulation—even a partial deregulation as in this case. Opponents of this bill have employed all the emotional arguments generated by this mythology.

The biggest myth of all, however, is that the Hatch Act has produced a "politically neutral bureaucracy." The bureaucracy is no political eunuch. It has its biases. And those biases are generally unrelated to which party controls

the White House. Those biases are in favor of regulation and more regulation.

What we must ask ourselves, then is: Is the cost in individual rights denied to Federal workers worth continuing just to keep the illusion that we have eliminated the problem political bias in the bureaucracy?

The real issue is the need to rebuild public confidence in Government, confidence eroded by a big-spending, inactive Congress and an executive branch ensnared in its own redtape. The emotional scare tactics of opponents of this bill contribute to our basic problem of Government responding to images, rather than reality.

Mr. DOMINICK V. DANIELS. Mr. Chairman, I wish to associate myself with the remarks of my distinguished colleague, and add my own strong support for H.R. 8617, the Federal Employees' Political Activities Act of 1975.

It is sadly ironic that Federal employees are denied the right to participate as private citizens in the political life of this Nation, while their counterparts in State and local government employment have had these political activity prohibitions lifted as of January 1 of this year through the enactment of the Federal Election Campaign Act amendments of 1974.

Are Federal employees less deserving of these basic rights? I respectfully submit that they are not.

But the fact remains that over 2 million people who work for the Federal Government have their rights to political activity tightly restricted by an ambiguous set of 3,000 administrative rulings which collectively comprise Hatch Act regulations.

If the Hatch Act is so unsatisfactory, why was it ever developed in the first place?

Well, as most of my colleagues are aware, the traditional interpretation has been that a comprehensive statute was needed because, during the rapid expansion of the Federal Government in the days of the New Deal, employees of relief agencies such as the Works Progress Administration were being used for political purposes.

One can conclude that, after examining the debates and other records of the event, Senator Hatch and the other framers of the act were concerned with protecting more Federal employees. However, they also wanted to liberalize the restrictive policy evolved by the Civil Service Commission and to protect freedom of speech. As a means of achieving these goals, they intentionally wrote a broad, loosely worded statement in order to permit liberal interpretation.

Experience has revealed that the vague language has been narrowly defined to produce even greater restrictions.

The historical record indicates that the very Senators who enacted the legislation were confused by the vagueness. In order to clarify his interpretation of the proscribed activities, Senator Hatch prepared an index card on which he listed 18 rulings based upon adjudications made by the Civil Service Commission pursuant to the Civil Service Act. When the Hatch Act was amended in 1940, it defined the prohibited activity by incorporating a reference to those 18 rulings made by the Civil Service Commission prior to 1940. This is the present form of the Hatch Act.

When passing the 1940 amendments, Congress expressly denied the Civil Service Commission the power to promulgate rules and regulations specifically pertaining to the Hatch Act. The Commission was denied the power to define political activity. Instead, the Civil Service Commission was saddled with over 3,000 of their pre-1940 rulings. When the amendment was introduced, Senator Hatch did not provide all of the rulings which were incorporated, but merely the same index card he had used in 1939. Thus, Congress passed the Hatch Act without being fully aware of the scope of these rulings.

Mr. Chairman, while the well-intentioned Congressmen who passed the original act and amendment may have been unsure as to the political activities proscribed by the act, time has provided ample opportunity for legal review of these pre-1940 rulings. As a class, they are restrictive, and many of them are clearly in violation of the first amendment to our Constitution.

Time for corrective action by Congress is long overdue.

Mr. Chairman, I am sure my colleagues would be amazed by some of the glaring examples of unconstitutionality which were provided during the committee's extensive hearings on this legislation. Indeed, the hearing record makes very interesting reading, and I would commend it to the attention of my colleagues, especially those interested in American history and constitutional law. However, time does not permit me to go into great detail, so I will simply say that the hearing record is replete with examples of how the Hatch Act has been applied to infringe upon the basic rights of American citizens—citizens who happen to work for the Federal Government.

The legislation before us today is comprehensive and much needed, and I am proud to have been one of the original cosponsors of the bill. It is legislation

that will restore basic political rights to over 2 million Federal workers while providing even stronger protection against abuse and exploitation by unscrupulous superior officials.

Mr. Chairman, the legislation before us prohibits the use of official authority, influence or coercion with the right to vote, not to vote or otherwise engage in political activity. The bill also prohibits the use of funds to influence votes: The solicitation of political contributions in Government rooms or buildings; and political activity while on duty, in Federal buildings or in uniform. Additionally, the bill provides leave for candidates for elective office, and establishes an independent board whose function is to adjudicate alleged violations of the law. The legislation also authorizes the Civil Service Commission to investigate alleged violations of the law, and subjects violators of the law to removal, suspension or lesser penalties at the discretion of the board.

The provision of the legislation that I strongly endorse is the requirement that the Civil Service Commission conduct a program of Federal employee education about their rights to political participation, and that this requirement includes an annual report to Congress on its implementation.

Mr. Chairman, this is a very important provision because it is essential that all Federal employees be informed of political rights and restrictions in clear and explicit language. The lack of knowledge and employee confusion under the current act has served as a very effective brake upon even legitimate political activity, and this trend must be reversed.

Finally, Mr. Chairman, I will conclude my remarks that it is altogether fitting that this Congress act to restore basic political rights to Federal workers in time for these rights to be enjoyed in the bicentennial year. Let us not forget the original purpose of the revolution which we will commemorate next year. In this spirit, let us lift the tyranny of ambiguity and confusion from the minds of Federal workers, and restore to them a clear understanding of what is and what is not permissible under the law in the area of political activity.

Mr. Chairman, I strongly urge all of my colleagues to join me in support of this landmark legislation in a congressional affirmation of confidence in the 2.8 million Federal workers who serve our Nation.

Mr. WIRTH. Mr. Chairman, I rise in support of H.R. 8617, which is nothing less than a restoration of American citizenship to American civil servants. Ever

since the well-intentioned Hatch Act became law in 1939, public employees have been denied the basic political freedoms that the Constitution is supposed to guarantee. They have been denied the rights to full and free speech and association.

No one familiar with the Nixon administration's crass attempts to politicize the civil service can be unaware of the dangers of exposing public employees to political pressure. But those attempts took place, and sometimes succeeded, in spite of the presence of the Hatch Act. In the wake of Watergate, we know that the civil service can never be watertight.

It is true that there are Government employees who like the Hatch Act as it is, and cite the abuses of the recent past as reason enough for voting against this bill. But many of these people are survivors of the McCarthy era, men and women who were traumatized by the political headhunting of those years. They long ago swore never to take risks by getting involved in politics. But the Hatch Act was in force throughout that time, and provided no real protection.

This does not mean, of course, that we can afford to dispense with the Hatch Act, nor does this bill propose to do so. It means only that we should be aware of the limits of any paper guarantee against certain kinds of politicization in the civil service. The most important and effective provisions of the Hatch Act—the prohibition on coercion and vote buying, and on political activity while at work—are reinforced.

Finally, let us ask what sense it makes to keep civil servants so heavily insulated from the political life of the Nation. They are supposed to carry out public policy, yet they are denied any experience of the forces that shape policymaking. It is reasonable to suspect that the American people's complaints about Government remoteness are related to that insulation. We keep civil servants in a kind of political wet-suit, and it is not good for either them or us.

Mr. BADILLO. Mr. Chairman, I rise in support of H.R. 8617. In the last few years, politics has become a dirty word. In this body we refer to ourselves as Members or Representatives, or lawyers, teachers, farmers. But the one thing we all certainly are is politicians. I think it is important to remember that. And it is important, too, to remember what politics is—it is the very "grassroots" business of participating in the business of running this country.

The Federal Government is the largest single employer in America. What we have done since 1939, simply, is to ex-

clude the largest single bloc of employees in America from playing an active role in determining the direction of their Government. The Congress sends out mixed messages. We go back to our districts and exhort our constituents to play an active role in politics. We tell them that voting is not enough, that the system is open to anyone who cares enough to change things—and that everyone has the potential for playing a role—either as a worker or even as a candidate in the affairs of their party. And then, on the other side, we have perpetuated for 27 years, since 1939 a law that says something else. It says that Congress is open only to certain classes of people, that State and local legislatures are elected through the participation by some of the people. And we see, through Watergate, what closed door politics has gotten us—politics for the few. And I am, therefore, particularly appalled at those proposed amendments that would exclude Federal employees from running for office. The bill before us is structured to provide adequate safeguards against abuse, and to punish those who would violate its provisions. But to punish those who work for the Government simply because they have chosen public service, is not only an abridgement of constitutional rights, but a step backward in the slow progress we are making toward a government that is truly representative of America's citizens.

Mr. ASHBROOK. Mr. Chairman, I strongly oppose the passage of H.R. 8617. This bill would repeal the Hatch Act and return Federal employment to the spoils system. It would also lead to further erosion of public confidence in our Government institutions.

The Hatch Act was enacted in 1939 as a response to massive partisan manipulation of the Federal service. The public was sick and tired of the patronage politics that had pervaded Federal employment. They were fed up with a Government that operated like a political machine.

So in 1939 the Congress moved to establish an efficient and impartial Federal service. Employment and advancement is now determined by merit rather than a person's political contributions. Employees are protected from forced participation in political activities or making "donations" to a campaign against their will.

H.R. 8617 would change all that. It would politicize the executive branch of our National Government. The discredited spoils system once again would become a major factor in the Federal service.

This would be intolerable. It is essen-

tial that Federal employees conduct the public business in an impartial fashion. If these employees become identified with narrow partisan interests there will be doubt as to their impartiality in executing the public duties. The basic fairness and integrity of the civil service would be brought into question. The confidence of the people in the integrity of their public institutions is already at a low ebb. Let us not further undermine that confidence.

I would also like to point out that the rights extended by H.R. 8617 would even apply to employees of sensitive Government agencies such as the Internal Revenue Service and the FBI. An employee who audits tax returns or investigates alleged illegal activities could at the same time actively engage in partisan political activities. Citizens naturally are going to wonder about the integrity of these agencies and whether they are getting fair treatment. Furthermore, the inside information garnered from these jobs could be very useful in a campaign. The potential for abuse is staggering.

Admittedly there are some drawbacks to the Hatch Act. Nevertheless, I think that on the whole this system has served our Nation and Federal employees well. I remain firmly convinced that Federal employment should continue to be based on job performance rather than political service. I still believe that some restrictions must be placed on the political activities of Federal employees in order to have the Government function fairly and efficiently.

Mr. DODD. Mr. Chairman, the Hatch Act was passed in 1939, with the clear intent of protecting a rapidly increasing number of Federal, civilian and Postal Service employees from involuntary support of a certain political party or candidate. The intent of this Act was commendable, and over the years since its enactment it has served this purpose, by and large, but it is not perfect. The Hatch Act constitutes a unique and unfortunate infringement on the political rights and freedoms of the nearly 2 million Federal and postal employees to which it now applies.

Mr. Chairman, Congress must now act to amend the Hatch Act in order to afford these Federal employees the same right to exercise their prerogative of voluntary political participation that is enjoyed by all other American citizens. The Federal Employees' Political Activities Act of 1975, H.R. 8617, which is now before the Committee of the Whole House for consideration, would accomplish these goals.

Clearly, it is in the best interest of

the American public and the pursuit of true democracy to see that all citizens are allowed to participate in the promotion of their political candidates and ideals voluntarily and without constraint. The tenets of H.R. 8617 are based on this fundamental premise. The bill is complete in its provisions against improper political solicitations of Federal employees, thus safeguarding their free participation in the political process.

This bill protects the public interest by disallowing any political activities which would even suggest to interfere with the performance of the official duties of employees. It strictly prohibits the solicitation of political contributions by supervising officials, and prohibits the making of political contributions within any Government building. In addition, H.R. 8617 has provisions for dealing with any violations, and sets forth sanctions which would apply to offenders.

Indeed, the Federal Employees' Political Activities Act not only provides for and encourages free and voluntary participation in politics by Federal employees, but it also provides even stronger protection against coercion than that which is provided by existing law.

Mr. Chairman, Federal employees have overwhelmingly indicated their support for this legislation. This bill has the support of most Federal employees' unions and associations because of its employee protection provisions.

It is not in the public interest to deny nearly 2 million of the electorate full participation in the political process. I ask that my colleagues consider this legislation on the basis of its merits, and I urge them to join me in restoring the alienated political rights of these Federal employees by approving H.R. 8617.

Mr. CLAY. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

The CHAIRMAN pro tempore (Mr. Evans of Colorado). The Clerk will read.

The Clerk read as follows:

H.R. 8617

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Employees' Political Activities Act of 1975".

SEC. 2. (a) Subchapter III of chapter 73 of title 5, United States Code, is amended to read as follows:

"SUBCHAPTER III—POLITICAL ACTIVITIES

"§ 7321. Political participation

"It is the policy of the Congress that employees should be encouraged to fully exercise, to the extent not expressly prohibited by law, their rights of voluntary participation in the political processes of our Nation.

"§ 7322. Definitions

"For the purpose of this subchapter—

"(1) 'employee' means any individual, including the President and the Vice President; employed or holding office in—

"(A) an Executive agency,

"(B) the government of the District of Columbia,

"(C) the competitive service, or

"(D) the United States Postal Service or the Postal Rate Commission;

but does not include a member of the uniformed services;

"(2) 'candidate' means any individual who seeks nomination for election, or election, to any elective office, whether or not such individual is elected, and, for the purpose of this paragraph, an individual shall be deemed to seek nomination for election, or election, to an elective office, if such individual has—

"(A) taken the action required to qualify for nomination for election, or election, or

"(B) received political contributions or made expenditures, or has given consent for any other person to receive political contributions or make expenditures, with a view to bringing about such individual's nomination for election, or election, to such office;

"(3) 'political contribution'—

"(A) means a gift, subscription, loan, advance, or deposit of money or anything of value, made for the purpose of influencing the nomination for election, or election, of any individual to elective office or for the purpose of otherwise influencing the results of any election;

"(B) includes a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a political contribution for any such purpose; and

"(C) includes the payment by any person, other than a candidate or a political organization, of compensation for the personal services of another person which are rendered to such candidate or political organization without charge for any such purpose;

"(4) 'superior' means an employee (other than the President or the Vice President) who exercises supervision of, or control or administrative direction over, another employee;

"(5) 'elective office' means any elective public office and any elective office of any political party or affiliated organization; and

"(6) 'Board' means the Board on Political Activities of Federal Employees established under section 7327 of this title.

"§ 7323. Use of official authority or influence; prohibition

"(a) An employee may not directly or indirectly use or attempt to use the official authority or influence of such employee for the purpose of—

"(1) interfering with or affecting the result of any election; or

"(2) intimidating, threatening, coercing, commanding, influencing, or attempting to intimidate, threaten, coerce, command, or influence—

"(A) any individual for the purpose of interfering with the right of any individual to vote as such individual may choose, or of causing any individual to vote, or not to

vote, for any candidate or measure;

"(B) any person to give or withhold any political contribution; or

"(C) any person to engage, or not to engage, in any form of political activity whether or not such activity is prohibited by law.

"(b) For purposes of subsection (a) of this section, 'use of official authority or influence' includes, but is not limited to, promising to confer or conferring any benefit (such as appointment, promotion, compensation, grant, contract, license, or ruling), or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, compensation, grant, contract, license, or ruling).

"§ 7324. Solicitation; prohibition

"An employee may not—

"(1) give or offer to give a political contribution to any individual either to vote or refrain from voting, or to vote for or against any candidate or measure, in any election;

"(2) solicit, accept, or receive a political contribution to vote or refrain from voting, or to vote for or against any candidate or measure, in any election;

"(3) knowingly give or hand over a political contribution to a superior of such employee; or

"(4) knowingly solicit, accept, or receive, or be in any manner concerned with soliciting, accepting, or receiving, a political contribution—

"(A) from another employee (or a member of another employee's immediate family) with respect to whom such employee is a superior; or

"(B) in any room or building occupied in the discharge of official duties by—

"(1) an individual employed or holding office in the Government of the United States, in the government of the District of Columbia, or in any agency or instrumentality of the foregoing; or

"(1) an individual receiving any salary or compensation for services from money derived from the Treasury of the United States.

"§ 7325. Political activities on duty, etc.; prohibition

"An employee may not engage in political activity—

"(1) while such employee is on duty,

"(2) in any room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States, in the government of the District of Columbia, or in any agency or instrumentality of the foregoing, or

"(3) while wearing a uniform or official insignia identifying the office or position of such employee.

"§ 7326. Leave for candidates for elective office

"(a) An employee who is a candidate for elective office shall, upon the request of such employee, be granted leave without pay for the purpose of allowing such employee to engage in activities relating to such candidacy.

"(b) Notwithstanding section 6302(d) of this title, an employee who is a candidate for elective office shall, upon the request of such

employee, be granted accrued annual leave. Such leave shall be in addition to leave without pay to which such employee may be entitled under subsection (a) of this section.

"§ 7327. Board on Political Activities of Federal Employees

"(a) There is established a board to be known as the Board on Political Activities of Federal Employees. It shall be the function of the Board to hear and decide cases regarding violations of section 7323, 8324, and 7325 of this title.

"(b) The Board shall be composed of 3 members—

"(1) one member of which shall be appointed, with the confirmation of a majority of both Houses of the Congress, by the President and who shall serve as Chairman of the Board;

"(2) one member of which shall be appointed, with the confirmation of a majority of both Houses of the Congress, by the Speaker of the House of Representatives, after consultation with the majority leader of the House and the minority leader of the House; and

"(3) one member of which shall be appointed, with the confirmation of a majority of both of the Congress, by the President pro tempore of the Senate, after consultation with the majority leader of the Senate and the minority leader of the Senate.

"(c) Members of the Board shall be chosen on the basis of their professional qualifications from among individuals who, at the time of their appointment, are employees (as defined under section 7322(1) of this title).

"(d) (1) Members of the Board shall serve a term of 3 years, except that of the members first appointed—

"(A) the Chairman shall be appointed for a term of 3 years,

"(B) the member appointed under subsection (b) (2) of this section shall be appointed for a term of 2 years, and

"(C) the member appointed under subsection (b) (3) of this section shall be appointed for a term of 1 year.

An individual appointed to fill a vacancy occurring other than by the expiration of a term of office shall be appointed only for the unexpired term of the member such individual will succeed. Any vacancy occurring in the membership of the Board shall be filled in the same manner as in the case of the original appointment.

"(2) If an employee who was appointed as a member of the Board is separated from service as an employee he may not continue as a member of the Board after the 60-day period beginning on the date so separated.

"(e) The Board shall meet at the call of the Chairman.

"(f) All decisions of the Board with respect to the exercise of its duties and powers under the provisions of this subchapter shall be made by a majority vote of the Board.

"(g) A member of the Board may not delegate to any person his vote nor, except as expressly provided by this subchapter, may any decisionmaking authority vested in the Board by the provisions of this sub-

chapter be delegated to any member or person.

"(h) The Board shall prepare and publish in the Federal Register written rules for the conduct of its activities, shall have an official seal which shall be judicially noticed, and shall have its office in or near the District of Columbia (but it may meet or exercise any of its powers anywhere in the United States).

"(i) The Civil Service Commission shall provide such clerical and professional personnel, and administrative support, as the Chairman of the Board considers appropriate and necessary to carry out the Board's functions under this subchapter. Such personnel shall be responsible to the Chairman of the Board.

"(j) The Administrator of the General Services Administration shall furnish the Board suitable office space appropriately furnished and equipped, as determined by the Administrator.

"(k) (1) Members of the Board shall receive no additional pay on account of their service on the Board.

"(2) Members shall be entitled to leave without loss of or reduction in pay, leave, or performance or efficiency rating during a period of absence while in the actual performance of duties vested in the Board.

"§ 7328. Investigation; procedures; hearing

"(a) The Civil Service Commission shall investigate reports and allegations of any activity prohibited by section 7323, 7324, or 7325 of this title.

"(b) As a part of the investigation of the activities of an employee, the Commission shall provide such employee an opportunity to make a statement concerning the matters under investigation and to support such statement with any documents the employee wishes to submit. An employee of the Commission lawfully assigned to investigate a violation of this subchapter may administer an oath to a witness attending to testify or depose in the course of the investigation.

"(c) (1) If it appears to the Commission after investigation that a violation of section 7323, 7324, or 7325 of this title has not occurred, it shall so notify the employee and the agency in which the employee is employed.

"(2) Except as provided in paragraph (3) of this subsection, if it appears to the Commission after investigation that a violation of section 7323, 7324, or 7325 of this title has occurred, the Commission shall submit to the Board and serve upon the employee a notice by certified mail, return receipt requested (or if notice cannot be served in such manner, then by any method calculated to reasonably apprise the employee)—

"(A) setting forth specifically and in detail the charges of alleged prohibited activity;

"(B) advising the employee of the penalties provided under section 7329 of this title;

"(C) affording period of not less than 30 days within which the employee may file with the Board a written answer to the charges in the manner prescribed by rules by the Board; and

"(D) advising the employee that unless the employee answers the charges, in writing,

within the time allowed therefor, the Board is authorized to treat such failure as an admission by the employee of the charges set forth in the notice and a waiver by the employee of the right to a hearing on the charges.

"(3) If it appears to the Commission after investigation that a violation of section 7323, 7324, or 7325 of this title has been committed by—

"(A) the Vice President;

"(B) an employee appointed by the President and with the advice and consent of the Senate;

"(C) an employee whose appointment is expressly required by statute to be made by the President;

"(D) the Mayor of the District of Columbia; or

"(E) the Chairman or a member of the Council of the District of Columbia, as established by the District of Columbia Self-Government and Governmental Reorganization Act;

the Commission shall refer the case to the Attorney General for prosecution under title 18, and shall report the nature and details of the violation to the President and to the Congress.

"(d) (1) If a written answer is not duly filed within the time allowed therefor, the Board may, without further proceedings, issue its final decision and order.

"(2) If an answer is duly filed, the charges shall be determined by the Board on the record after a hearing conducted by a hearing examiner appointed under section 3105 of this title, and, except as otherwise expressly provided under this subchapter, in accordance with the requirements of subchapter II of chapter 5 of this title, notwithstanding any exception therein for matters involving the tenure of an employee. The hearing shall be commenced within 30 days after the answer is filed with the Board and shall be conducted without unreasonable delay. As soon as practicable after the conclusion of the hearing, the examiner shall serve upon the Board, the Commission, and the employee such examiner's recommended decision with notice to the Commission and the employee of opportunity to file with the Board, within 30 days after the date of such notice, exceptions to the recommended decision. The Board shall issue its final decision and order in the proceeding no later than 60 days after the date the recommended decision is served. The employee shall not be removed from active duty status by reason of the alleged violation of this subchapter at any time before the effective date specified by the Board.

"(e) (1) At any stage of a proceeding or investigation under this subchapter, the Board may, at the written request of the Commission or the employee, require by subpoena the attendance and testimony of witnesses and the production of documentary or other evidence relating to the proceeding or investigation at any designated place, from any place in the United States or any territory or possession thereof, the Commonwealth of Puerto Rico, or the District of Columbia. Any member of the Board may issue subpoenas and members of the Board

and any hearing examiner authorized by the Board may administer oaths, examine witnesses, and receive evidence. In the case of contumacy or failure to obey a subpoena, the United States district court for the judicial district in which the person to whom the subpoena is addressed resides or is served may, upon application by the Board, issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

"(2) The Board (or a member designated by the Board) may order the taking of depositions at any stage of a proceeding or investigation under this subchapter. Depositions shall be taken before an individual designated by the Board and having the power to administer oaths. Testimony shall be reduced to writing by or under the direction of the individual taking the deposition and shall be subscribed by the deponent.

"(3) An employee may not be excused from attending and testifying or from producing documentary or other evidence in obedience to a subpoena of the Board on the ground that the testimony or evidence required of the employee may tend to incriminate the employee or subject the employee to a penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the employee is compelled to testify or produce evidence. No employee shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the employee is compelled, after having claimed the privilege against self-incrimination, to testify or produce evidence, nor shall testimony or evidence so compelled be used as evidence in any criminal proceeding against the employee in any court, except that no employee shall be exempt from prosecution and punishment for perjury committed in so testifying.

"(f) An employee upon whom a penalty is imposed by an order of the Board under subsection (d) of this section may, within 30 days after the date on which the order was issued, institute an action for judicial review of the Board's order in the United States District Court for the District of Columbia or in the United States district court for the judicial district in which the employee resides or is employed. The institution of an action for judicial review shall not operate as a stay of the Board's order, unless the court specifically orders such stay. A copy of the summons and complaint shall be served as otherwise prescribed by law and, in addition, upon the Board. Thereupon the Board shall certify and file with the court the record upon which the Board's order was based. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that the additional evidence may materially affect the result of the proceeding and that there were reasonable grounds for failure to adduce the evidence at the hearing conducted under subsection (d) (2) of this section, the court may direct that the additional evidence be taken before the Board in the manner and on the terms and conditions

fixed by the court. The Board may modify its findings of fact or order, in the light of the additional evidence, and shall file with the court such modified findings or order. The Board's findings of fact, if supported by substantial evidence, shall be conclusive. The court shall affirm the Board's order if it determines that it is in accordance with law. If the court determines that the order is not in accordance with law—

"(1) it shall remand the proceeding to the Board with directions either to enter an order determined by the court to be lawful or to take such further proceedings as, in the opinion of the court, are required; and

"(2) it may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred by the employee.

"(g) The Commission or the Board, in its discretion, may proceed with any investigation or proceeding instituted under this subchapter notwithstanding that the Commission or the head of an employing agency or department has reported the alleged violation to the Attorney General as required by section 535 of title 28.

"§ 7329. Penalties

"(a) Subject to and in accordance with section 7328 of this title, an employee who is found to have violated any provision of section 7323, 7324, or 7325 of this title shall, upon a final order of the Board, be—

"(1) removed from such employee's position, in which event that employee may not thereafter hold any position (other than an elected position) as an employee (as defined in section 7322(1) of this title) for such period as the Board may prescribe;

"(2) suspended without pay from such employee's position for such period as the Board may prescribe; or

"(3) disciplined in such other manner as the Board shall deem appropriate.

"(b) The Board shall notify the Commission, the employee, and the employing agency of any penalty it has imposed under this section. The employing agency shall certify to the Board the measures undertaken to implement the penalty.

"§ 7330. Education program; reports

"(a) The Commission shall establish and conduct a continuing program to inform all employees of their rights of political participation and to educate employees with respect to those political activities which are prohibited.

"(b) On or before March 30 of each calendar year, the Commission shall submit a report covering the preceding calendar year to the Speaker of the House of Representatives and the President pro tempore of the Senate for referral to the appropriate committees of the Congress. The report shall include—

"(1) the number of investigations conducted under section 7328 of this title and the results of such investigations;

"(2) the name and position or title of each individual involved, and the funds expended by the Commission, in carrying out the program required under subsection (a) of this section; and

"(3) an evaluation which describes—

"(A) the manner in which such program is being carried out; and

"(B) the effectiveness of such program in carrying out the purposes set forth in subsection (a) of this section.

"§ 7331. Regulations

"The Civil Service Commission shall prescribe such rules and regulations as may be necessary to carry out its responsibilities under this subchapter."

(b) (1) Sections 8332(k) (1), 8706(e), and 8906(e) (2) of title 5, United States Code, are each amended by inserting immediately after "who enters on" the following: "leave without pay granted under section 7326(a) of this title, or who enters on".

(2) Section 3302 of title 5, United States Code, is amended by striking out "7153, 7321, and 7322" and inserting in lieu thereof "and 7153".

(3) Section 1308(a) and title 5, United States Code, is amended—

(A) by inserting "and" at the end of paragraph (2);

(B) by striking out paragraph (3); and

(C) by redesignating paragraph (4) as paragraph (3)

(4) The second sentence of section 8332 (k) (1) of title 5, United States Code, is amended by striking out "second" and inserting "last" in lieu thereof.

(5) The section analysis for subchapter III of chapter 73 of title 5, United States Code, is amended to read as follows:

"SUBCHAPTER III—POLITICAL ACTIVITIES

"Sec.

"7321. Political participation.

"7322. Definitions.

"7323. Use of official authority or influence; prohibition.

"7324. Solicitation; prohibition.

"7325. Political activities on duty, etc.; prohibition.

"7326. Leave for candidates for elective office.

"7327. Board on Political Activities of Federal Employees.

"7328. Investigation; procedures; hearing.

"7329. Penalties.

"7330. Education program; reports.

"7331. Regulations."

(c) Sections 602 and 607 of title 18, United States Code, relating to solicitations and making of political contributions, are each amended by adding at the end thereof the following new sentence: "This section does not apply to any activity of an employee, as defined in section 7322(1) of title 5, unless such activity is prohibited by section 7324 of that title."

(d) Section 6 of the Voting Rights Act of 1965 (42 U.S.C. 1973d) is amended by striking out "the provisions of section 9 of the Act of August 2, 1939, as amended (5 U.S.C. 1181), prohibiting partisan political activity" and by inserting in lieu thereof "the provisions of subchapter III of chapter 73 of title 5, United States Code, relating to political activities".

(e) Sections 103(a) (4) (D) and 203(a) (4) (D) of the District of Columbia Public Education Act are each amended by striking out "sections 7324 through 7327 of title 5" and inserting in lieu thereof "section 7325 of title 5".

(f) The amendments made by this section shall take effect on the ninetieth day after the date of the enactment of this Act.

Mr. CLAY (during the reading). Mr. Chairman, I ask unanimous consent that the bill be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Missouri?

There was no objection.

COMMITTEE AMENDMENTS

The CHAIRMAN pro tempore. The Clerk will report the first committee amendment.

The Clerk read as follows:

Committee amendment: Page 5, line 2, after "measure" insert "in any election".

The committee amendment was agreed to.

The CHAIRMAN pro tempore. The Clerk will report the next committee amendment.

The Clerk read as follows:

Committee amendment: Page 5, line 8, strike out "purposes" and insert "the purpose".

The committee amendment was agreed to.

The CHAIRMAN pro tempore. The Clerk will report the next committee amendment.

The Clerk read as follows:

Committee amendment: Page 6, line 20, insert "(a)" before "An".

The committee amendment was agreed to.

The CHAIRMAN pro tempore. The Clerk will report the next committee amendment.

The Clerk read as follows:

Committee amendment: Page 7, immediately after line 4, insert the following:

"(b) The provisions of subsection (a) of this section shall not apply to—

"(1) the President and the Vice President; or

"(2) an individual—

"(A) paid from the appropriation for the White House Office,

"(B) paid from funds to enable the Vice President to provide assistance to the President, or

"(C) on special assignment to the White House Office, unless such individual holds a career or career-conditional appointment in the competitive service.

AMENDMENT OFFERED BY MR. DIGGS TO THE COMMITTEE AMENDMENT

Mr. DIGGS. Mr. Chairman, I offer an amendment to the committee amendment.

The Clerk read as follows:

Amendment offered by Mr. Diggs to the committee amendment: Section 7325(b) is

amended by striking the word "or" at the end of line 7; and is further amended by striking out the period at the end of line 16 and inserting in lieu thereof the following: "; or

"(3) The Mayor of the District of Columbia, the Chairman or a member of the Council of the District of Columbia, as established by the District of Columbia Self-Government and Governmental Reorganization Act."

(Mr. DIGGS asked and was given permission to revise and extend his remarks.)

Mr. DIGGS. Mr. Chairman, this is an amendment which, in effect, counteracts the inadvertence of eliminating the exemption of the Mayor of the city of Washington and the Chairman of the City Council and the members of the Council from the application of certain provisions of the Hatch Act.

Those Members who were participants in the debate on the Home Rule Act will recall that we incorporated this provision in that act in order to permit them to participate in the local political process, just as elected officials are so permitted in other jurisdictions around the country.

Unfortunately, at the time this matter was considered by the committee of jurisdiction, it was overlooked. As a result, without the amendment that I am offering, it would cause an unnecessary interruption in the local government the next time the election rolled around. To participate in the local political process, members of the City Council, the Chairman, and the Mayor would have to resign once they became candidates without this kind of an exemption.

It was for that reason that the provision was put in the home rule bill, in the first place; and it is for that reason that I offer this amendment to continue that exemption.

Mr. CLAY. Mr. Chairman, will the gentleman yield?

Mr. DIGGS. Yes, I yield to the gentleman from Missouri.

Mr. CLAY. Mr. Chairman, this was an oversight by the committee in not including this in the original draft.

Therefore, on behalf of the committee, we will accept the amendment.

Mr. DIGGS. I thank the gentleman.

Mr. DERWINSKI. Mr. Chairman, will the gentleman yield?

Mr. DIGGS. Yes, I yield to the gentleman from Illinois.

Mr. DERWINSKI. Mr. Chairman, I recognize the point that the gentleman is trying to correct. I just want to clarify this for the record.

I am quite surprised that a bill that is so well drafted would have such a major oversight but I do wonder whether I un-

derstand correctly that the gentleman's amendment would permit the Mayor and Chairman of the D.C. City Council the normal latitude in political activities that it is the intent of this measure that they have, and that this is correcting that technical situation. Otherwise, as the gentleman mentioned, they would be forced to resign office in order to run for reelection; is that correct?

Mr. DIGGS. The gentleman is correct, and that would also apply to the other members of the City Council.

Mr. DERWINSKI. Mr. Chairman, there is no objection on this side to the gentleman's amendment.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Michigan (Mr. Diggs) to the committee amendment.

The amendment to the committee amendment was agreed to.

AMENDMENT OFFERED BY MR. DERWINSKI TO THE COMMITTEE AMENDMENT

Mr. DERWINSKI. Mr. Chairman, I offer an amendment to the committee amendment.

The Clerk read as follows:

Amendment offered by Mr. DERWINSKI to the committee amendment: On page 7, line 12, strike out the word "or"; and in line 14, insert the word "or" immediately after "Office," and immediately following line 14, insert the following:

"(D) in a position of a confidential or policy-determining character which is expected from the competitive service,

(Mr. DERWINSKI asked and was given permission to revise and extend his remarks.)

Mr. DERWINSKI. Mr. Chairman, this amendment is a logical extension of the decision the Post Office and Civil Service Committee made in exempting the President and his immediate advisors from restrictions on engaging in political activities while on duty.

The bill as originally presented prohibited all employees of the executive branch, including the President and Vice President, from engaging in political activities while on duty, in any room or building in which a government employee is engaged in duties, or while in a uniform that identifies the person as a Federal employee.

In committee it was decided to exempt from these rather superficial restrictions the President, the Vice President, and their White House office staff for pretty obvious reasons. The President, if he is going to seek reelection must be able to continue his official duties at the same time.

Therefore, the inclusion of schedule C employees under this same exemption is

natural, because these are the appointments the President makes to carry out the policies of his administration. These appointments are outside the competitive service, and their tenure is linked to the occupant of the White House.

If what is sought under this legislation is the freedom for Federal employees to engage in partisan political activities, then we should allow equal freedom to all those employees whose appointments are tied to the political fortunes of the Chief Executive.

Mr. CLAY. Mr. Chairman, I rise in opposition to this little perfecting amendment. I would like to inform the gentleman from Illinois that we left it out of the bill intentionally. It was not through an oversight that we left it out.

What the gentleman from Illinois is proposing would actually gut the entire effect of this bill. The gentleman is proposing that all schedule C people, heads of agencies, and any other policymaking divisions be exempt from this provision which in effect would permit all of these persons to legally campaign while on official duty.

That was not the purpose of this bill. We were trying to blanket as many people under the provisions of this act as we possibly could. I do not see how we could justify permitting all these people in these sensitive positions to be able to use the telephone during normal working hours to do any kind of campaigning they want to during normal work hours and at the expense of the taxpayers of this country.

Mr. Chairman, I ask that this amendment to the committee amendment be defeated.

Mr. HARRIS. Mr. Chairman, if the gentleman will yield, do I understand that if this amendment to the committee amendment is adopted that an Attorney General could be a campaign manager and operate in the Attorney General's office and direct the campaign from the Attorney General's office; is that the sort of thing that would come under this amendment?

Mr. CLAY. The gentleman from Virginia is precisely correct.

Mr. GONZALEZ. Mr. Chairman, I move to strike the last word.

(Mr. GONZALEZ asked and was given permission to revise and extend his remarks.)

Mr. GONZALEZ. Mr. Chairman, this amendment offered by the gentleman from Illinois (Mr. DERWINSKI), if I understand it correctly, would perpetuate the Malek memorandums and practices. That is exactly what it would do. If the gentleman from Illinois knows what I

have reference to when I say the Malek memorandums.

Mr. DERWINSKI. I understand.

Let me point out that we are speaking now of Presidential appointments, non-competitive Presidential appointments and it is a fact of life that these people are appointed because of their specific loyalty to the President.

Mr. GONZALEZ. Under schedule C.

Mr. DERWINSKI. That is right, under schedule C. And there is nothing, unethical about this. Schedule C employees are political employees.

Mr. GONZALEZ. That is true, and it has been almost traditionally. But it has been the Achilles heel of the merit system all along. And it was that which Mr. Malek so broadly used, plus a few hints on how to subvert the merit system itself, not only schedule C employees, but the merit system itself.

If I had had my brother's position and had been on the Committee on the Judiciary, the thing that I would have hung around former President Nixon's neck as an impeachable offense was his complete subversion of the merit system through the politicalization of it, through the Malek memorandum and the schedule C abuses.

There is no worse enemy for a first rater in the merit system than a second rater or a third rater or a political employee.

I thought that this august Civil Service Committee would come in with some real reform. I am shocked that here instead of addressing ourselves to that, we are compounding this monumental and egregious error and in effect institutionalizing the absolute doing away with the merit system.

Really I sympathize with the gentleman. What he is saving is if we are going to have a sinner, to wit, the merit system employee, then let us give the schedule C sinner equal rights.

Mr. DERWINSKI. If the gentleman will yield to me to give me a moment to explain my amendment, it merely says if we have a political employee, openly recognize him as such. To me it would be the height of hypocrisy to maintain that schedule C employees should come under the minimum prohibitions of this bill before us. The political facts of life are that schedule C employees get their positions because of political reasons. I am not arguing the Malek issue which involved trying to subvert the Civil Service. I am not arguing Watergate abuses. I am now talking about clear-cut schedule C employees which, if any one of the candidates of the gentleman's party should take office in January of 1977, he would

not want the restrictions in this act imposed on those schedule C employees.

Mr. GONZALEZ. I have never been for all of this foolishness. That is why I never promised anybody a job to begin with. It is the height of political folly. If one goes out here and runs for the Congress, or any other Federal job, and he promises some citizen, "If I get in, I will give you a job," then under the Hatch Act, or any other act such as that as they presume it to be, or proclaim it to be, he cannot be helpful to me. He will not be able to campaign for me, so I have never made that kind of promise.

What I am saying is if we are going to have a merit system, if we are going to try to get the merit system back to the federal system of merit—and throughout the decades the Federal Government has set the pace for merit employment, merit in the sense that it has set the pace for working conditions, for fair treatment, for just pension rights, for quality of work, and protection from political interference—that means a favor. A schedule C is by very definition a favored employee. He is exempt from the usual procedures under the merit system, and its requirements, because he belongs to the right political party that happens to be in control.

Whether we are Democrats or Republicans or the administration party or the antiadministration party, or whether we are talking about individuals who are going to dedicate their lives to the service of the Federal bureaucracy, we are trying to protect them.

This bill very euphoniously says, "A bill for the protection" but we have had that kind of bill before. All I am saying is that the gentleman's amendment does not help it any. It just says if we are going to have these sinners, then let my friends be the legalized sinners, too.

Mr. Chairman, I yield back the remainder of my time.

Mr. FORD of Michigan. Mr. Chairman, I make the point of order that a quorum is not present.

The CHAIRMAN. Evidently a quorum is not present.

The Chair announces that pursuant to clause 2, rule XXII, he will vacate proceedings under the call when a quorum of the Committee appears.

Members will record their presence by electronic device.

A quorum of the Committee of the Whole has not appeared.

The Chair announces that a regular quorum call will now commence.

Members who have not already responded under the noticed quorum call will have a minimum of 15 minutes to re-

port their presence. The call will be taken by electronic device.

The call was taken by electronic device, and the following Members failed to respond:

[Roll No. 622]

Andrews, N.C.	Heckler, Mass.	Scheuer
Boggs	Horton	Shuster
Brown, Calif.	Johnson, Colo.	Sikes
Clawson, Del.	Jones, N.C.	Sisk
Conyers	Jones, Okla.	Solarz
Coughlin	Kemp	Stanton,
Dellums	McCollister	James V.
Diggs	Mann	Steed
Duncan, Oreg.	Milford	Stephens
Esch	Moorhead, Pa.	Teague
Eshleman	Mosher	Treen
Evins, Tenn.	Murphy, N.Y.	Udall
Fary	Passman	Vanik
Fraser	Patman, Tex.	Wiggins
Gialmo	Pickle	Wilson, C. H.
Harsha	Pike	Wyllie
Hébert	Rees	

Accordingly the Committee rose; and the Speaker pro tempore (Mr. McFALL) having assumed the chair, Mr. FOLEY, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill H.R. 8617, and finding itself without a quorum, he had directed the Members to record their presence by electronic device, whereupon 384 Members recorded their presence, a quorum, and he submitted herewith the names of the absentees to be spread upon the Journal.

The Committee resumed its sitting.

The CHAIRMAN. Are there other Members who wish to be heard on the amendment offered by the gentleman from Illinois (Mr. DERWINSKI) to the Committee amendment?

Mr. FORD of Michigan. Mr. Chairman, I move to strike the requisite number of words and I rise in opposition to the amendment to the Committee amendment.

(Mr. FORD of Michigan asked and was given permission to revise and extend his remarks.)

Mr. FORD of Michigan. Mr. Chairman, I would like to ask the gentleman from Illinois (Mr. DERWINSKI) a few questions, and I would yield to the gentleman in order that he may answer the questions.

As I read the gentleman's amendment to the Committee amendment, it adds to the exemption already proposed by the Committee amendment for the immediate employees of the President, all those people—

In a position of a confidential or policy-determining character which is excepted from the competitive service.

Could the gentleman from Illinois tell us how many people this would encompass and what examples of those posi-

tions would be?

Mr. DERWINSKI. Mr. Chairman, if the gentleman will yield, I am pleased to help the gentleman.

Let me say that my amendment would apply to approximately 1,400 employees, the schedule C employees, obviously political employees.

Mr. FORD of Michigan. Would the gentleman select out for us the kind of people involved? And I certainly am not trying to make any reference to anybody connected with Watergate, or anybody else, but only to inquire what people and what positions the gentleman is talking about in these 1,400 employees that he would exempt completely from the restrictions on political activities?

Mr. DERWINSKI. Positions such as those of confidential secretaries, administrative assistants to executive branch officials, people in a direct, political, personal relationship to the head of departments, and so forth.

Mr. FORD of Michigan. The gentleman from Illinois spoke against the bill and has indicated that he is going to oppose the bill and the gentleman gave as his principal reason for opposing the bill that since 1939 the central purpose has been to protect the Federal employee from undue pressure, political pressures, being brought upon him by his superiors. Yet, the gentleman now offers as an amendment to the committee amendment an exemption from the restrictions of this act of the very people who would be most likely to be expected to be asserting political pressure on those that come under them because the gentleman says in his amendment:

In a position of a confidential or policy-determining character which is excepted from the competitive service.

It is my understanding that that is worded so broadly, the staff tells me that anyone appointed by the President, subject to confirmation by the Senate, would be exempted from the provisions of the act. It would seem to me that we are exempting exactly the wrong people.

If the purpose of the Hatch Act is to protect Federal employees from undue political pressure by people who are in a position to take retribution against them if they do not become amenable to their political pressures, then these people, above all, should not be added to the exemption which is already very broad, and which was worked out in a compromise with the Republicans. I might say, to exempt the President and all of his personal employees. They are the only people who can draw a Federal pay check and actively campaign on Federal property during working hours, using Federal facilities.

We have already given the gentleman everybody that they normally use over there in a campaign, and now he is trying to add to them.

Mr. Chairman, I yield back the remainder of my time.

Mr. ROUSSELOT. Mr. Chairman, I move to strike the requisite number of words. My colleague, the gentleman from Michigan, was very eager to have answers, so we will give him answers.

Mr. DERWINSKI. Mr. Chairman, will the gentleman yield?

Mr. ROUSSELOT. I yield to the gentleman from Illinois.

Mr. DERWINSKI. I thank the gentleman for yielding.

We have just accepted an amendment exempting the Mayor of the District of Columbia and the members of the Council of the District of Columbia. I would just like to point out that we are really discussing schedule C employees under any President, under any administration, who are political employees. To think they are not is to turn one's back on reality.

All my amendment does is address the reality of the situation that schedule C employees, who serve only for the period of the administration, are in fact expected to have political loyalties. This amendment, I think, actually is a logical one if anybody accepts the logic of this bill.

Mr. CLAY. Mr. Chairman, will the gentleman yield?

Mr. ROUSSELOT. I will be glad to yield to my colleague, the gentleman from Missouri.

Mr. CLAY. I thank the gentleman for yielding.

The committee accepted the amendment exempting the Mayor of the District of Columbia and the City Council because if we had not accepted that amendment, they would have to resign from office in order to campaign for reelection.

But what the gentleman is proposing now is that we exempt 1,400 people and say to them, "It is perfectly all right for you to campaign on Federal time, on Federal property, type political letters on Federal typewriters, and make telephone calls from your office." That is precisely what the gentleman is asking this body to do, and that is precisely why this committee is opposed to this amendment.

Mr. DERWINSKI. Mr. Chairman, will the gentleman yield?

Mr. ROUSSELOT. I yield to my colleague, the gentleman from Illinois.

Mr. DERWINSKI. If there is any logic in here, let me point out that if the gentleman's bill has merit, these em-

ployees under the present law are exempt. In other words, what he is ironically doing is trying to bring in through the act people who have flexibility because of their nonpolitical responsibility. All I am addressing myself to is the logic of the Federal Government structure. We do have under any President people who have a political responsibility. To say they do not is just defying reality. These schedule C employees have no tenure. They are not taken from a competitive list. They do not have civil service protection. They serve at the whim of the President. They leave as soon as he leaves, or sooner.

All I am saying is that since they are in fact political operatives, they should not be under restrictions that would interfere with their political responsibilities.

Mr. ROUSSELOT. Mr. Chairman, I yield back the remainder of my time.

Mr. HINSHAW. Mr. Chairman, I move to strike the requisite number of words.

I would like to ask the author of the amendment, or any member of the committee—who might be in a position to interpret the language as to whether or not the approximately 1,400 persons who would be exempted would include, for example, the Commissioner of Internal Revenue.

Mr. DERWINSKI. No. We are speaking about officials confirmed by the Senate.

Mr. CLAY. Mr. Chairman, will the gentleman yield?

Mr. HINSHAW. I yield to the gentleman from Missouri.

Mr. CLAY. I disagree with the interpretation of my friend. It would exempt the Director of Internal Revenue and the Attorney General and just about anybody else one in a major policymaking position.

Mr. HINSHAW. I would like to ask the gentleman from Illinois (Mr. DERWINSKI) as to whether or not his amendment is intended to exempt from the provisions of the committee bill as written persons such as the Attorney General and the Commissioner of Internal Revenue and the various Secretaries of the Cabinet and persons of that caliber?

Mr. DERWINSKI. No, my amendment does not apply to employees appointed by the President with the advice and consent of the Senate. It mainly applies to the assistants and secretaries to these top officials.

Mr. HINSHAW. One of my concerns, I might point out to members of the Committee, is that there was recently

reported in the newspapers an example of one of the Members of the other body, a Senator from one of our Western States, about whom it was suggested in the newspaper article that he is the subject of political maneuverings within the Internal Revenue Service. I do not know whether those allegations are correct or not, but it would seem to me if the Commissioner of Internal Revenue and some of his top deputies could engage in political activities during office hours in their offices, the amendment we are now considering should be so drawn that it would make clear that such employees could not campaign in their offices during office hours. That type of amendment strikes me as perhaps an attempt to make the rest of the bill unacceptable.

I have mixed views as to whether or not Federal employees at all levels should be permitted to campaign. I have a belief that many employees are denied their constitutional rights if they are not permitted to campaign on their own time.

But I am particularly concerned about this amendment and I would like to confirm with the gentleman from Illinois as to whether his amendment is intended to include the Attorney General and the Commissioner of Internal Revenue and other such officers?

Mr. DERWINSKI. No, let me repeat, my amendment does not apply to top appointed officials of the Government.

Mr. HINSHAW. Would this also include the Director of the Office of Management and Budget?

Mr. DERWINSKI. Yes, because he is covered by Senate confirmation.

Mr. HINSHAW. Yes. But because he is the Director of the Office of Management and Budget could he not apply pressure to officers in other agencies who would not wish to get involved otherwise, but just simply would do so in order to protect their budget?

Mr. DERWINSKI. I would gather he would have that influence, but that could be argued at great length and I suppose he could generate some pressure.

But would the gentleman yield to me and permit me to ask a question of the gentleman from Missouri?

Mr. HINSHAW. I yield to the gentleman from Illinois.

Mr. DERWINSKI. Mr. Chairman, is it the feeling, do I detect, of the gentleman from Missouri that my amendment is running contrary to the intent of the legislation offered by the gentleman from Missouri?

Mr. CLAY. Very much so.

Mr. DERWINSKI. Mr. Chairman, in that case, I ask unanimous consent to withdraw my amendment.

The CHAIRMAN. The gentleman from Illinois asks unanimous consent to withdraw his amendment to the committee amendment.

Is there objection to the request of the gentleman from Illinois?

There was no objection.

The CHAIRMAN. The question is on the committee amendment, as amended.

The committee amendment, as amended, was agreed to.

The CHAIRMAN. The Clerk will report the next committee amendment.

The Clerk read as follows:

Committee amendment: Page 8, line 1, before the period insert "for the purpose of allowing such employee to engage in activities relating to such candidacy".

The committee amendment was agreed to.

The CHAIRMAN. The Clerk will report the remaining committee amendments.

The Clerk read as follows:

Committee amendments: Page 8, line 9, strike out "section" and insert "sections".

Page 8, line 9, strike out "8324" and insert "7324";

Page 8, line 22, strike out "House" and insert "Houses".

Page 12, line 11, strike out "affording" and insert "specifying".

Page 18, line 20, strike out "Education" and insert "Educational".

Page 18, line 24, immediately after the period, insert the following:

"The Commission shall inform each employee individually in writing, at least once each calendar year, of such employee's political rights and of the restrictions under this subchapter. The Commission may determine, for each State, the most appropriate date for providing information required by this subsection. Such information, however, shall be provided to employees employed or holding office in any State not later than 60 days before the earliest primary or general election for State or Federal elective office held in such State."

Page 21, in the item relating to section 7330 in the analysis, strike out "Education" and insert "Educational".

Page 21, line 8, after "employee" insert a comma.

Page 21, line 9, after "title 5" insert a comma.

The committee amendments were agreed to.

AMENDMENT OFFERED BY MR. CLAY

Mr. CLAY. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. CLAY: Page 8, strike out line 11 and all that follows down through page 9, line 14, and insert in lieu thereof the following:

"(b) The Board shall be composed of 3 members, appointed by the President, by and with the advice and consent of the Senate. One member shall be designated by the President as Chairman of the Board.

"(c) Members of the Board shall be chosen on the basis of their professional qualifications from among individuals who, at the time of their appointment, are employees (as defined under section 7322(1) of this title), except that not more than 2 individuals of the same political party may be appointed as members. Employees of the Civil Service Commission shall be ineligible to be appointed to or to hold office as members of the Board.

"(d) (1) Members of the Board shall serve a term of 3 years, except that of the members first appointed—

"(A) the Chairman shall be appointed for a term of 3 years,

"(B) one member, designated by the President, shall be appointed for a term of 2 years, and

"(C) one member, designated by the President, shall be appointed for a term of 1 year."

Mr. CLAY (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Missouri?

There was no objection.

Mr. CLAY. Mr. Chairman, this amendment would change the procedure for appointing members on the Board of Political Activity of Federal employees. In H.R. 8617 we provided for setting up a board to adjudicate grievances or charges. We asked that one member of the board be chosen by the President and one by the Senate and one by the House. In recent days a court of appeals held a similar board to be unconstitutional as it relates to the Federal Election Commission. Rather than having a constitutional cloud hanging over the head of this bill and a board which may be ruled unconstitutional, we ask to amend this bill to permit the President of the United States to appoint all three members of the panel.

Mr. DERWINSKI. Mr. Chairman, I move to strike the last word. I do so primarily to direct a question to the chairman of the subcommittee.

Mr. Chairman, do I understand that the purpose of this amendment is in anticipation of possible constitutional questions? Does the gentleman, therefore, wish to refine the bill at this stage?

Mr. CLAY. That is correct.

Mr. DERWINSKI. Are there any other such amendments to this legislation that the gentleman or any members of his immediate working committee would propose?

Mr. CLAY. No, not to my knowledge. The court opinion came after the bill was marked up in full committee.

Mr. DERWINSKI. So in other words, the committee moved too quickly and therefore it must now correct itself?

Mr. CLAY. We could say that the court moved too slowly.

Mr. DERWINSKI. Mr. Chairman, we have no objections to any nonpartisan perfecting amendments.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Missouri (Mr. CLAY).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. DERWINSKI

Mr. DERWINSKI. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. DERWINSKI: On page 2, strike out line 9 and insert the following:

"(1) 'employee' means a Congressional employee as defined by section 2107 of this title and any individual, including

(Mr. DERWINSKI asked and was given permission to revise and extend his remarks.)

Mr. DERWINSKI. First, Mr. Chairman, I define what the title "congressional employee" means in my amendment. A congressional employee means an employee of either the House or the Senate, of a committee of either House or a joint committee of the two Houses, an elected officer of either House who is not a Member of Congress; legislative counsel of either House or employees of his office, a member of the Capitol Police, employees of a Member of Congress if the pay of the employee is paid by the Secretary of the Senate or Clerk of the House, the Architect of the Capitol, employees of the Botanical Garden and employees of the Capitol Guide Service.

My amendment merely provides this: That all of our congressional employees will be covered by this bill. The present Hatch Act exempts legislative employees from its provisions. I think at the time this was probably an oversight, since congressional staffs were rather small at that time.

I would think, if the gentleman from Missouri would argue as he did, that schedule C employees ought to be covered by his new bill. Certainly, legislative employees should be covered.

I would like to point out that this amendment has two very basic purposes. First, it would bring legislative branch employees under the political activity restrictions of the pending bill. Second, it would give legislative employees the same rights as are granted executive

branch employees under the bill. I think this is another oversight, and I am trying to correct it. I would hope that a sense of balance between the executive and legislative branches and a feeling of responsibility on the part of the Members, would indicate that we would recommend bringing our employees under the coverage of this act.

Mr. DICKINSON. Mr. Chairman, will the gentleman yield?

Mr. DERWINSKI. I yield to the gentleman from Alabama.

Mr. DICKINSON. Mr. Chairman, would I understand the gentleman's amendment to mean, then, that a Member of Congress would be prohibited from having anyone on his staff assisting him or traveling with him in connection with his campaign?

Mr. DERWINSKI. No, they would be prohibited from engaging in any part of the campaign while in his office in Washington, or in the district office.

Mr. DICKINSON. Could the gentleman tell me when a campaign starts and stops?

Mr. DERWINSKI. Theoretically, the campaigning starts the day after an election. If a Member intends to run again, of course, he is under the Federal Election Commission, and I guess he is potentially a candidate.

Mr. DICKINSON. Could the gentleman help me in defining what is meant by "partisan politics"? When it comes to answering mail within the office, would my employees be prohibited from answering mail relative to politics?

Mr. DERWINSKI. I find it difficult to answer the question since I am dealing with a bill of which I am not a sponsor and there is no definition of political activity in the bill. Perhaps the gentleman from Missouri might be able to shed some light as to what he means, as a sponsor of this bill, by "political activity."

Mr. DICKINSON. As I understand the gentleman's amendment, his amendment would broaden it to cover the staff when it deals with political activity, either by the Senate or the House.

Mr. DERWINSKI. The point is that under the pending bill, which I oppose, political activity is not permitted in Federal buildings—in this particular case, it would be the office of the Member—but that political activity outside the office, villages, in the city, in rural areas, on the part of that individual would be permitted under the bill.

Mr. GILMAN. Mr. Chairman, will the gentleman yield?

Mr. DERWINSKI. I yield to the gentleman from New York.

Mr. GILMAN. I thank the gentleman for yielding. Am I correct that there is no specification or definition of the term "political activity" in this measure?

Mr. DERWINSKI. That is my understanding from reading the bill.

Again, although I believe we tried to discuss that earlier with the gentleman from Missouri, there is nothing as I see it in the pending bill, that would give us a good definition of what is political.

Mr. GILMAN. If the gentleman will yield further, that is the very issue we raised earlier. I hope that my amendment will be able to resolve this question.

Mr. DICKINSON. Mr. Chairman, will the gentleman yield?

Mr. DERWINSKI. I yield to the gentleman from Alabama.

Mr. DICKINSON. I thank the gentleman for yielding. I am troubled by this, because I have seen the first evidence of our activity on the Election Commission we just set up, and I would assume since there is no specificity in this bill as to what is political, we would have to leave it up to the Federal Election Commission as to what is political and what is not political.

Would that be the gentleman's interpretation?

Mr. DERWINSKI. That is not my interpretation of the intent of this bill. If the gentleman will permit me, I will point out that one of the reasons I am opposed to this bill is because it is so vague. It seems to liberalize, and it does so in such a fashion as to lay it open to all sorts of interpretations.

Mr. HARRIS. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I wonder if my good friend and colleague, the gentleman from Illinois (Mr. DERWINSKI), will answer a question with regard to his amendment.

There is one thing that has been always very refreshing about my colleague, the gentleman from Illinois (Mr. DERWINSKI), and that is that he has always answered questions very directly and very specifically. I remember a couple of weeks ago he made the claim that if he supported an amendment in committee it was only to mess up the bill, he was not for the amendment. I would like to have my colleague tell me if this amendment really is the type of thing he wants in the law, and is he still opposed to the bill?

Mr. DERWINSKI. If the gentleman will yield, I thought I made it clear I am offering this amendment because I thought it was consistent with the arguments that the gentleman from Missouri and others have made on schedule C employees. Certainly we in the Legisla-

tive branch would want our employees, to be covered by this noble new act, as well as employees of the executive branch.

Mr. HARRIS. The gentleman would still be opposed to the bill even with this provision in it: is that correct?

Mr. DERWINSKI. Since the gentleman is demanding an honest answer, let me say that this bill is so bad that my amendment gives it a touch of legitimacy it does not deserve, and I would have to oppose it anyway.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois (Mr. DERWINSKI).

The question was taken; and the Chairman announced that the yeas appeared to have it.

Mr. BROWN of Michigan. Mr. Chairman, I demand a recorded vote.

A recorded vote was refused.

So the amendment was rejected.

AMENDMENT OFFERED BY MR. ROUSSELOT

Mr. ROUSSELOT. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. ROUSSELOT: Page 7, line 18, insert "(1)" immediately after "(a)".

Page 7, immediately after line 21, insert the following:

"(2) Any employee who is a candidate for elective office shall be placed on leave without pay effective beginning on whichever of the following dates is the later:

"(A) the 90th day before any election (including a primary election, other than a primary election in which such employee is not a candidate) for that elective office, or

"(B) the day following the date on which the employee became a candidate for elective office.

Such leave shall terminate on the day following the election or the day following the date on which the employee is no longer a candidate for elective office, whichever first occurs. The preceding sentence shall not apply to the extent an employee is otherwise on leave. The Civil Service Commission shall, upon application, exempt from the application of this paragraph any employee who is a candidate for any part-time elective office."

Page 8, beginning in line 3 and ending in line 4, strike out "to which such employee may be entitled" and insert in lieu thereof the following: "of such employee".

Page 8, immediately after line 4, insert the following new subsections:

"(c) An employee shall promptly notify the agency in which he is employed upon becoming a candidate for elective office and upon the termination of such candidacy.

"(d) The foregoing provisions of this section shall not apply in the case of an individual who is an employee by reason of holding an elective public office.

Mr. CLAY (during the reading). Mr. Chairman, I ask unanimous consent that

the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Missouri?

Mr. ROUSSELOT. Mr. Chairman, reserving the right to object, does the gentleman from Missouri mind if we allow the Clerk to complete the reading of the amendment? It will not take very much longer.

Mr. CLAY. Mr. Chairman, if the gentleman will yield, I withdraw my unanimous-consent request.

(The Clerk completed the reading of the amendment.)

Mr. ROUSSELOT. Mr. Chairman, this amendment would require that a Federal employee who is a candidate for election must promptly notify the agency in which he is employed. The agency must place the employee on leave without pay either on the 90th day before the election either general or primary, or on the day following the date which the employee becomes a candidate; whichever comes later.

An employee is a candidate when he has taken the action to qualify for nomination for election, or election; or has received political contributions or made expenditures; or has given consent for any person to receive political contributions or make expenditures, with a view to bringing about such employee's nomination for election, or election, to such office.

In a recent study conducted by the Congressional Research Service's International Law Division, the conclusion was that the following countries require that their government employees take mandatory leave without pay: Australia, Canada, France, Belgium, Great Britain, Japan, and New Zealand. So it is certainly not unusual for a government employee to be required, to take mandatory leave without pay.

Those candidates who are running for election to part-time elective office; for example, county water commissioner, school board, smalltown mayor, and so forth, shall be exempted from the requirement to take leave without pay upon the application of that employee to the Civil Service Commission. It is contemplated that most elective positions at county level or below will be exempted. However, the Commission must make that determination on a case by case basis.

The purpose of the amendment is to prevent those who are candidates for full-time elective positions from remaining on the Federal payroll while they

are campaigning for political office. I would strongly urge the adoption of this important amendment.

Mr. CLAY. Mr. Chairman, will the gentleman yield?

Mr. ROUSSELOT. I yield to the gentleman from Missouri.

Mr. CLAY. Mr. Chairman, I endorse this proposed amendment. It requires that employees, as defined in the bill, who seek elective office, must take leave from their positions 90 days prior to the election or immediately upon becoming a candidate for elective office, whichever comes later. The employee may elect to take accrued annual or other paid leave if this is available. Such leave terminates immediately upon the day after election, or when the employee declares that he is no longer a candidate for elective office.

The Civil Service Commission is authorized, upon the request of an employee who seeks part-time elective office, to grant that employee an exemption from the application of this provision.

It is my expectation that the commission will make a broad definition of the term "part time." This would include public and party positions, the fulfillment of whose responsibilities in the ordinary course of events would not generally interfere with the discharge of an employee's official duties. I anticipate that elective offices, especially political party elective offices, in political subdivisions below the county or municipal level would almost always fall within the definition of part-time elective office. Public elective offices in less than complete taxing jurisdictions with limited functions and limited periods of compensation would also fall within the determination of part-time elective office.

It is imperative that Federal employees maintain not only the reality but the image of keeping political activities separate from the performance of their duties. This provision would provide an additional means of insuring that such activities do not erode public confidence in the impartial administration of government.

I applaud my colleague for offering this amendment. It merits our support.

AMENDMENT OFFERED BY MR. CLAY TO THE
AMENDMENT OFFERED BY MR. ROUSSELOT

Mr. CLAY. Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

Amendment offered by Mr. CLAY to the amendment offered by Mr. ROUSSELOT: at the end of the amendment add the following: "except that the provisions of section 7326 (a) (2) of title 5, United States Code, as amended by this Act, shall take effect on

the one hundred and twentieth day after such date"; and

Page 22, immediately below line 7, insert the following:

"(g) Not later than sixty days after the date of the enactment of this Act, the Civil Service Commission shall—

"(1) establish standards and criteria by which determinations shall be made as to which elective offices will be considered part-time elective offices for purposes of administering section 7326(a) (2) of such title 5, and

"(2) prepare and transmit a report to the Congress containing such standards and criteria."

(Mr. CLAY asked and was given permission to revise and extend his remarks.)

Mr. CLAY. Mr. Chairman, this amendment provides that the provision of H.R. 8617, requiring 90 days' mandatory leave for employees who seek elective office, shall take effect 120 days following the enactment of the bill. It further provides that, within 60 days following enactment of this bill, the Civil Service shall establish standards and criteria for the determination of which elective offices shall be considered part time, for purposes of administering that provision, and that the report containing such standards and criteria shall be prepared and transmitted to the Congress for review.

It is my expectation, of course, that any subsequent modifications of these standards and criteria, would also be referred to the Congress for review purposes, 90 days prior to implementation.

It is imperative that the Congress have the opportunity to review the meaning of part-time elective office, as determined by the Civil Service Commission. If accepted, this amendment will afford the Congress, through its appropriate committees, the opportunity to exercise proper oversight in this aspect of H.R. 8617.

I urge my colleagues to support this amendment.

Mr. HINSHAW. Mr. Chairman, I move to strike the requisite number of words.

(Mr. HINSHAW asked and was given permission to revise and extend his remarks.)

Mr. HINSHAW. Mr. Chairman, I would like, if I might, to have a colloquy with the author of each of the two amendments in order to clarify my understanding of what each amendment seeks to do.

I ask my colleague, the gentleman from California (Mr. ROUSSELOT), does his amendment apply only to those Federal employees who are running for Federal office or would it include State and local offices as well?

Mr. ROUSSELOT. Mr. Chairman, if the gentleman will yield, my amendment would apply to all Federal em-

ployees who run for full-time jobs.

It would not apply to a school board election, say, which is not considered a full-time job, or it would not apply to a city council election which is not a full-time job.

If, let us say, the mayor of a city has a full-time job, then it would apply.

Therefore, it applies to all elective offices that are full-time jobs.

Mr. HINSHAW. Could the gentleman from California (Mr. ROUSSELOT) explain his rationale for including those running for full-time jobs who may choose to campaign solely outside of their normal, required working hours?

Mr. ROUSSELOT. The point is that a civil service employee may campaign for a part-time elective office without being placed in a 90-day leave without pay status.

The attempt is to prevent federally paid employees from campaigning for full-time elective office, without taking a 90-day leave of absence, during the primary or the general election. The thesis was that in the private sector most boards of directors of corporations require employees to take a leave of absence without pay when they are campaigning for a full-time public office.

Mr. HINSHAW. It is my understanding that in the past, in the private sector as well as in the public sector, employees other than Federal could do whatever they chose to do on his own time, that he could campaign or not campaign as he saw fit.

Mr. ROUSSELOT. Yes; this amendment does not alter that.

Mr. HINSHAW. But as I understand the gentleman's amendment, if a person chooses to campaign outside of his normally required working hours, notwithstanding his intent and his practice, he must take leave to campaign outside of normal working hours; is that correct?

Mr. ROUSSELOT. That is correct.

Mr. HINSHAW. Why would the gentleman think that we should single out Federal employees when the same thing would not apply to State and local employees?

Mr. ROUSSELOT. In many cases, as the gentleman knows, State and city employees running for full-time office are required to take leave.

Mr. HINSHAW. I am not aware of any State or local employee who is required to take leave if he chooses to campaign outside of the normal working hours.

Could the gentleman give me an example of that?

Mr. ROUSSELOT. Yes; I believe in California we have such laws which relate to county and State employees or

for given types of offices.

Mr. HINSHAW. Mr. Chairman, I am unaware of any exemptions in California where a person cannot run for an office and campaign on his own time outside of normal working hours.

Mr. ROUSSELOT. Let me say to the gentleman from California that if the gentleman believes that Federal employees should be allowed to campaign then the gentleman should vote against the amendment.

Mr. HINSHAW. I just wanted to clarify what the amendment would do.

Mr. FORD of Michigan. Mr. Chairman, I move to strike the requisite number of words.

(Mr. FORD of Michigan asked and was given permission to revise and extend his remarks.)

Mr. FORD of Michigan. Mr. Chairman, I take this time because I find that there is considerable disagreement on our side about what the effect of this amendment would be. I understand that there has been discussion between the author of the bill and the author of the amendment attempting to reach an accommodation but I have become convinced in the last few minutes that what they purport to attempt to do is not being accomplished.

As I read the amendment it would prohibit anyone from remaining on the Federal payroll who was covered by the act from that time, 90 days before a primary election, until the ultimate general election, if he were nominated. In some of our States, as the Members well know, primary elections take place in the early spring and the general election not until November. So we may be saying that to run for any political office partisan or nonpartisan you must be off up to 6 months. I understand that we will have an amendment that would say that if you want to run for a Federal office you would have to get off the Federal payroll for some period of time before you ran for office. But this amendment applies to all offices. It says any employee who is a candidate for elective office. It does not say Federal office or partisan elected office. Unlike the gentleman's description when he explained his amendment, it does not say "full-time" office.

Then the amendment says the Civil Service Commission shall, upon application, exempt from the application of this paragraph any employee who is a candidate for any part-time elective office.

The gentleman from Missouri (Mr. CLAY) tries to patch that up with his amendment by saying let the Civil Service Commission have 120 days to decide what is part time.

A State legislator in one State is paid

considerably more than they are paid in other States. Which of them is a part time, or a full time, job? Does the mayor of a small city who gets \$10,000 a year get blocked out of his payroll because it is a full-time job because in that city they consider \$10,000 a full-time job? While a county commissioner in another State running for a \$25,000-a-year job may be ruled to be a part-time employee?

Mr. HINSHAW. Mr. Chairman, if the gentleman will yield, I would just like to suggest that under the original amendment and the amendment to the amendment that the Federal Civil Service officials here in Washington, would, in fact, in order to carry out the intent of both the amendments, have to analyze each and every elective office in the entire country be they State, Federal, local, or the part-time offices such as the parks and recreational district offices.

Mr. FORD of Michigan. I thank the gentleman from California.

Mr. Chairman, I would like to recite an experience I had in my background, and that is that I was a member of the Michigan Constitutional Convention when we got into very difficult discussions on defining elective jobs. I think if the Members will look at the constitutions of their States they will seldom ever see an elective position described, whether a constitutional position or a statutory position described as a full- or

part-time position until you get to those specific instances such as judges.

I would merely like to prevail on both sides who have been showing such great cooperation in order to get a bill adopted here, to withdraw both of the amendments, and would suggest that possibly before we finally adopt the bill that we may be able to have language prepared that will do what they thought they meant by their amendments. But, really, and clearly, the amendment offered by the gentleman from California is fatally defective and is not cured by the amendment offered by the gentleman from Missouri. Therefore, I would urge the Members to vote no on both of the amendments unless they are withdrawn and corrected to achieve their stated purpose.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Missouri (Mr. CLAY) to the amendment offered by the gentleman from California (Mr. ROUSSELOT).

The amendment to the amendment was agreed to.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. ROUSSELOT), as amended.

The amendment, as amended, was agreed to.

AMENDMENT OFFERED BY MR. GILMAN

Mr. GILMAN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. GILMAN: Page 11, line 10, immediately after the period, insert the following new sentences: "Any such investigation shall terminate not later than 90 days after the date of its commencement, except that such 90-day limitation may be extended upon the written approval of the Board for the period specified in such approval. If the Commission does not make the notification required under subsection (c) of this section before the close of the period for investigation, subsections (c) (2) and (3) and (d) of this section, and section 7329 of this title, shall not apply thereafter to the employee involved with respect to the activities under investigation."

(Mr. GILMAN asked and was given permission to revise and extend his remarks.)

Mr. GILMAN. Mr. Chairman, my amendment addresses itself to the investigatory process and would require that the Civil Service Commission complete its investigation of a Federal employee's alleged illegal political activities within 90 days of the commencement of the investigation. The commencement of the investigation would be a factual determination made by the Board on Political Activities on the totality of the circumstances which indicate that the investigation has clearly focused on the Federal employee in question at a specific point in time. If the Commission requires additional time to complete its investigation, it must then apply to the Board on Political Activities for an extension of time. It is the intent of this amendment that requests for additional time be given only for good cause and that additional extensions would be given only under extenuating circumstances. I would like to reiterate that the original 90-day period does not begin to run until

the investigation has clearly focused on the individual Federal employee. An example of this situation might be a self-initiated investigation by the Civil Service Commission of a nationwide conspiracy by Federal employees to subvert the merit system of Federal hiring practices. It is clear that such an investigation could readily exceed the 90-day limitation before focusing on all those involved in such a conspiracy. It should also be evident that extenuating circumstances would clearly exist for the granting of additional extensions of time so that the secrecy of the investigation could be maintained until all those who were involved in the conspiracy were discovered.

Under this amendment, if the Commission fails to complete its investigation within the allotted time, all charges against the employee must be withdrawn.

The purpose of this amendment is to balance the interests of the Commission in effectively investigating alleged illegal political activities with the right of the employee to know within a reasonable time whether or not charges will be brought against him.

By adopting this amendment, the Commission would have to allocate sufficient resources to complete all investigations within a reasonable time so that justice may be served for all concerned as quickly as possible. I urge my colleagues to support this amendment.

Mr. CLAY. Mr. Chairman, I rise in support of the amendment.

(Mr. CLAY asked and was given permission to revise and extend his remarks.)

Mr. CLAY. Mr. Chairman, I support this amendment. It strengthens H.R. 8617 by requiring that the Civil Service Commission complete its investigation of reports and alleged violations of the law within 90 days of its commencement. An extension of time to conduct the investigation beyond this period may be granted only by the Board and then only for a specific period of time. Failure by the Commission to complete its investigation during the specified period invalidates any subsequent adverse actions by the Board. It is my understanding that this provision prohibits information derived from such an investigation from being subsequently used against employees concerned.

I commend my distinguished colleague for offering this amendment. By establishing a time limitation for the completion of the Commission's investigation, the rights of employees are protected and the public interest is served by requiring a speedy disposition to allegations and reports of violations of the law.

I hope that my colleagues will support this useful proposal. The committee accepts the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York (Mr. GILMAN).

The amendment was agreed to.

AMENDMENTS OFFERED BY MR. GUDE

Mr. GUDE. Mr. Chairman, I offer several amendments.

The Clerk read as follows:

Amendments offered by Mr. GUDE: Page 6, strike out lines 1 and 2 and insert in lieu thereof the following:

"(3) knowingly give or hand over a political contribution to another employee; or".

Page 6, strike out lines 6 through 8 and insert in lieu thereof the following:

"(A) from another employee (or a member of another employee's family); or".

Page 4, strike out lines 3 through 6 (relating to the definition of a superior).

Page 4, line 7, strike out "(5)" and insert in lieu thereof "(4)".

Page 4, line 10, strike out "(6)" and insert in lieu thereof "(5)".

Mr. GUDE (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered in gross, considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Maryland?

There was no objection.

(Mr. GUDE asked and was given permission to revise and extend his remarks.)

Mr. GUDE. Mr. Chairman, I offer an amendment to prohibit a Federal employee from knowingly giving or handing over a political contribution to another Federal employee.

Existing law expressly forbids such activity in order to insulate Federal employees from being inundated with hard-to-refuse requests. Now H.R. 8617 comes along and proposes that such contributions are OK—so long as they are "voluntary." The bill even goes so far as to amend certain criminal provisions in order to make this legal—except in the case of a superior-subordinate relationship.

These distinctions are just plain unworkable in the real world and only serve to strip the civil servant of his insulation—the bulwark of the civil service merit system.

It was not just happenstance that the era which brought about the Hatch Act in 1939 was referred to as the "New Gold Rush."

Proliferation of new deal programs brought congressional allegations of widespread financial solicitation by local political party officials.

These allegations were documented by a special Senate committee report which was a forerunner of the present prohibitions. The committee found that employment promotions and favorable work assignments were contingent upon the purchase of tickets to various fundraising functions or direct financial contributions to local political party organizations.

Just a year or so ago, officials in the Federal supply service of GSA were found in violation of the Hatch Act for having solicited contributions to a \$500-a-plate "Salute to the President" dinner.

The other day, the personnel director of a legislative agency urged the defeat of H.R. 8617. He told me:

My boss is appointed by the President. You better believe that if this bill is passed come election time everybody around here will be out campaigning and contributing—voluntarily of course—to secure promotions or just to retain their job. And that could well include me.

An article in the Washington Star puts the matter succinctly:

The fact is that direct pressure would not have to be used.

Ambitious, eager-beaver employees would see the handwriting on the wall and would volunteer their political services to their bosses and other employees seeing that their only chance for career advancement would depend on their political participation would also rush into the fray.

It is the nature of human beings to seek security for themselves and their families. If such contributions are allowed, civil servants may see their colleagues all around them falling into the "fray" and may feel compelled to contribute—voluntarily of course—in order to secure their jobs.

Whatever political activity is permitted will eventually be required.

Mr. CLAY. Mr. Chairman, I rise in opposition to the amendments.

(Mr. CLAY asked and was given permission to revise and extend his remarks.)

Mr. CLAY. Mr. Chairman, I rise in opposition to this proposed amendment.

There is no good reason as to why Federal employees should not be able to participate fully in the political process by making a political contribution—provided that such activities are voluntary and do not even appear to interfere with the impartiality and effectiveness of Government. H.R. 8617 permits employees to make political contributions so long as, like other political activities, they are neither solicited nor made on duty, in a government room or building, or while in uniform. Further, there are prohibitions against arm-twisting and putting pressure on members of the family of any Federal employee.

This proposal, under the guise of looking out for the interests of the public and employees themselves, is very regressive in limiting the political freedom of Federal employees. It adds nothing to the bill. The issue was carefully considered in the hearings conducted by the subcommittee. There was not one iota of testimony in support of such a prohibition.

I urge my colleagues to reject this ill-considered amendment.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Maryland (Mr. GUDE).

The question was taken; and on a division (demanded by Mr. GUDE) there

were—ayes 17, noes 21.

So the amendments were rejected.

AMENDMENT OFFERED BY MR. GILMAN

Mr. GILMAN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. GILMAN: Page 15, line 16, strike out "An" and insert in lieu thereof the following: "After requesting in writing and obtaining the approval of the Attorney General, the Board may determine that an employee's attendance and testimony are necessary to the carrying out of the Board's functions under this subchapter. (For purposes of the preceding sentence, if the Attorney General does not notify the Board in writing within 30 days after the date on which a request for such approval is made that the Board does not have his approval, then such approval is deemed to have been given.) If the Board makes that determination, such".

Page 16, line 1, insert "under this paragraph" immediately after "compelled" but before the comma.

Mr. GILMAN (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

(Mr. GILMAN asked and was given permission to revise and extend his remarks.)

Mr. GILMAN. Mr. Chairman, my amendment would require that the newly created Board on Political Activities obtain the written approval of the Attorney General before immunity from prosecution is granted by the Board to a Federal employee in order to compel testimony which may be detrimental to that employee's best interests.

H.R. 8617 fails to provide the necessary coordination between the Board and the Attorney General to prevent the damage or destruction of more serious criminal prosecutions by independent grants of immunity by the Board on Political Activities. My amendment would insure that the Attorney General will determine the final approval of any grants of immunity for self-incriminating testimony concerning illegal activities.

This amendment requires that the Attorney General respond to the Board's request for immunity within 30 days with a written response. If the Attorney General asks for an extension of time to study the request of immunity, he must be granted an additional 10 days if the reason is stated in written form to the Board within the 30-day period. If the Attorney General fails to respond to the Board's request within 30 days, the ap-

proval of the grant of immunity shall be deemed to have been given.

The coordination between the Attorney General and the Board on Political Activities on grants of immunity is essential to the effective and forceful prosecution of Federal employees who would violate our criminal statutes. I urge the adoption of this essential amendment.

Mr. CLAY. Mr. Chairman, will the gentleman yield?

Mr. GILMAN. I yield to the gentleman from Missouri.

Mr. CLAY. Mr. Chairman, I have no objections to this amendment. In the past, the Attorney General has been reluctant to prosecute individuals who are charged with violations of the criminal statutes dealing with political activities growing out of the Hatch Act. I agree with the concept that, should the Attorney General desire to prosecute such alleged offenders, his efforts should not be thwarted by the untimely granting of immunity from criminal prosecution of potential defendants. The approval to proceed with civil proceedings need not be granted by the Attorney General in writing. Disapproval of such authorization to proceed must be in writing. Failure of the Attorney General to make any

response within 30 days is deemed, for purposes of this legislation, to constitute approval to proceed with granting of immunity by the Board.

I congratulate my colleague for offering this proposed amendment and I urge my colleagues to support it.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York (Mr. GILMAN).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. ROUSSELOT

Mr. ROUSSELOT. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. ROUSSELOT: On page 21, in line 4, insert "(1)" immediately after "(c)" and immediately after line 10, insert the following:

(2) Chapter 29 of title 18 of the United States Code is amended—

(A) by adding at the end the following new section:

"§ 614. Extortion of political contributions from Federal personnel.

"Whoever, by the commission of or threat of physical violence to, or economic sanction against, any person, obtains, or endeavors to obtain, from an officer or employee of the United States or of any department or agency thereof, or from a person receiving any salary or compensation for services from money derived from the Treasury of the United States, any contribution for the promotion of a political object, shall be imprisoned not less than two nor more than three years, or fined

not more than \$5,000, or both.”; and

(B) by adding at the end of the table of sections for such chapter the following new item:

§ “614. Extortion of political contributions from Federal personnel.”

Mr. ROUSSELOT. Mr. Chairman, my amendment would create an additional section to title 18 of the United States Code entitled “Section 614. Extortion of political contributions from Federal personnel.” This amendment would make it a Federal crime to coerce a Federal employee to engage in political activity by means of physical violence or economic sanction against Federal employees or threats thereof in order to obtain or endeavor to obtain a contribution for the promotion of a political object. Contribution is defined as in section 591 of title 18:

The term “contribution” includes a gift, subscription, loan, advance, or deposit, of money, or anything of value, and includes a contract, promise, or agreement to make a contribution whether or not legally enforceable.

The amendment includes in the category of employee all those who receive funds from the Treasury of the United States. It is the intent of the amendment to extend the protection from coercion to those employees under State grant programs which are federally funded.

The language of the amendment is a synthesis of similar provisions in the 600 section of title 18 of the United States Code which relates to the prohibition of political activities of Federal employees and section 1931 of title 18 which prohibits the interference with commerce by threats of violence. This section is sometimes known by the popular name of the Hobbs Act.

The purpose of the amendment is to prevent those individuals who would attempt to undermine the integrity of Federal employees through threats of physical violence or economic sanction.

An example of this type of prohibited activity would be a Federal employee, who is represented by his union in an adverse action proceeding. Conceivably, the union could threaten to refuse to represent the employee if he did not participate in a certain candidate's campaign. This would clearly be a violation since it is a threat of economic sanction against the employee.

This amendment is essential to protect the Federal employee from those individuals who would attempt to undermine the integrity of the civil service.

Mr. CLAY. Mr. Chairman, will the gentleman yield?

Mr. ROUSSELOT. I yield to the gentleman from Missouri.

(Mr. CLAY asked and was given permission to revise and extend his remarks.)

Mr. CLAY. Mr. Chairman, I rise in support of this proposed amendment. It further protects Federal employees against improper coercion by any individual. It provides criminal sanctions against actual or threatened physical violence or economic sanctions. Employees in this section are defined to include civilian and postal employees of the executive, judicial, and legislative branches, members of the uniformed Armed Forces, and all other individuals whose salaries are paid from the Treasury of the United States.

The language is explicit and comprehensive. It is well within the spirit of H.R. 8617 and, accordingly, I urge its adoption.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. RousseLOT).

The amendment was agreed to.

AMENDMENTS OFFERED BY MR. FISHER

Mr. FISHER. Mr. Chairman, I offer several amendments.

The Clerk read as follows:

Amendment offered by Mr. FISHER: Page 6, strike out lines 19 and 20 and insert in lieu thereof the following:

“§ 7325. Political activities by employees, etc.; prohibition

“(a) An employee may not hold, or be a candidate for—

“(1) any elective office, unless such office is—

“(A) a part-time elective public office of a State or political subdivision of a State, or

“(B) to be held by an individual elected in a nonpartisan election, or

“(2) any office of a political party.

“(b) An employee may not engage in political activity—

“(1) in which such employee actively participates in any campaign activity on behalf of, or in opposition to, any political party or any candidate for any elective office, unless such activity is in connection with—

“(A) any campaign by any candidate for elective public office of a State or political subdivision of a State, or

“(B) any nonpartisan election.

Page 6, line 21, strike out “(1)” and insert in lieu thereof “(2)”.

Page 6, line 22, strike out “(2)” and insert in lieu thereof “(3)”.

Page 7, line 3, strike out “(3)” and insert in lieu thereof “(4)”.

Page 7, line 5, strike out “(b)” and insert in lieu thereof “(c)”, and strike out “subsections (a) and (b)”.

Page 7, immediately below line 16, insert the following:

“(d) The provisions of subsection (a) and of paragraph (1) of subsection (b) shall not apply to—

“(1) the head or the assistant head of

an Executive agency or military department;

"(2) an employee appointed by the President and with the advice and consent of the Senate;

"(3) the Mayor of the District of Columbia;

"(4) the Chairman or a member of the Council of the District of Columbia, as established by the District of Columbia Self-Government and Governmental Reorganization Act; or

"(5) the Recorder of Deeds of the District of Columbia.

"(e) For purposes of this section—

"(1) 'office of a political party' means the position of chairman, vice chairman, secretary, treasurer, or committeeman of any national, State, or local political party or any other substantially similar position;

"(2) 'nonpartisan election' means any election—

"(A) in which no candidate is to be nominated or elected as a representative of any political party which was identified with any candidate who received any vote in the last preceding election at which presidential electors were selected; or

"(B) on any issue, including a constitutional amendment, referendum, or any other issue, which is not identified with any political party; and

"(3) 'State' means 'any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, or any other territory or possession of the United States.

Page 7, strike out "elective office", beginning on line 18 and ending on line 19, and on line 23, and insert in lieu thereof "any elective office specified in subparagraph (A) or (B) of section 7325(a)(1)".

Page 21, in the item relating to section 7325 in the section analysis following line 3, strike out "on duty" and insert in lieu thereof "by employees".

Mr. FISHER (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the RECORD, and that the amendments be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Virginia

There was no objection.

(Mr. FISHER asked and was given permission to revise and extend his remarks.)

Mr. FISHER. Mr. Chairman, the central problem we deal with here is, on the one hand, to extend the right to participate in the political affairs of the country to Federal employees; and on the other hand, to protect these same Federal employees against discrimination and to preserve a neutral, efficient Civil and Postal Service. These two have to be reconciled; that is the problem.

I think the bill as presented by the committee is really quite good, but I

think it is deficient in several respects. I believe my amendments will restore the balance that we must find between these two very important objectives. More to the point, large numbers of Federal Government employees themselves agree with this.

My amendments do three things: First, it permits the Federal Government employees, postal employees, to run for part-time State and local offices—not full-time, but part-time. This covers nearly 80 percent of the mayors, 94 percent of the city councils, and virtually all the county commissioners, school boards and all the rest of it.

It would maintain the present law regarding Federal offices, that is, Federal employees would not be permitted to run for Federal offices; 535 Congressmen, President, and Vice President.

The second thing it does is to permit the Federal employees to campaign actively for candidates for State and local offices, full as well as part-time, but not candidates for Federal office. Finally, it would prohibit the Federal employees from holding office in partisan groups; that is, political parties at any level of government.

Mr. LONG of Maryland. Mr. Chairman, will the gentleman yield?

Mr. FISHER. I yield to the gentleman from Maryland.

Mr. LONG of Maryland. Mr. Chairman, I wonder if the gentleman would interpret the application of his amendment to situations where political workers are handing out at polling places tickets which contain both Federal, State, and local employees.

Mr. FISHER. They would not be able to do that for candidates for Federal office.

Mr. LONG of Maryland. They would be only able to hand out State tickets. They could not hand out a ticket in which a Federal office was involved?

Mr. FISHER. That is correct.

Mr. Chairman, I see a number of dangers in the present bill. If political offices and campaigns at the Federal level were open to Federal workers, I think the merit system as we know it and the impartial administration of the laws would be jeopardized. As it is, under the present law we have seen a vicious attempt in recent years to subvert the office, and the civil servants who live around here are very much aware of that. They have seen the efforts to politicize many of the bureaus and departments of Government. They have seen the famous or infamous Malek manual. They have seen many top level civil service officials replaced, officials who traditionally have been career

officers, with persons sent over from the White House to fill those positions and to try to operate in the agencies of Government.

These are very serious dangers, and they must not be permitted to happen.

Mr. Chairman, let me cite what some people in the Federal Government are saying about all this. I come from a district that has more civil servants than any other district in the whole country except the District of Columbia. I myself was a civil servant for many years. I started at the bottom grade and worked up, and I was an executive officer for some time of a Federal agency. I believe I know very well what Federal civil servants really think about this. My mail is running 8 or 10 to 1 from civil servants who oppose any change in the Hatch Act. I think some change along the lines of the committee bill would be good but it goes too far in removing protections against political pressure. I conducted a questionnaire, and over 20,000 people responded, not all of them civil servants, but I would judge one-third to 40 percent of them were civil servants. This poll shows 59 percent against any change in the Hatch Act and 34 percent for changes but of a variety of kinds.

There are a lot of bleeding hearts for these poor Federal civil servants. But they themselves, at least in my district where many of them live, do not agree with this. Predominantly they do not want changes but certainly they do not want changes that would permit supervisors in Federal agencies in subtle ways to influence what happens with respect to career advancement, salary, and working conditions, and all that.

Mr. Chairman, I have consulted also with not only present members of the Civil Service Commission and staff, but with two past Chairmen of the Civil Service Commission, one I believe a Republican, one a Democrat, and they take the same view that I do. They would go for the act if it had my amendment in it.

So I hope very much that Members here in this House will think it over and support a balanced proposal which will permit Federal Government employees and postal employees to take part in the vital political life of the Nation at the State and local levels where most of them would be headed anyway and not permit them to get mixed up in the affairs of Federal office candidates and campaigns.

I think this would be a good balance, and I strongly urge the support of my amendment.

Mr. HARRIS. Mr. Chairman; I rise in opposition to the amendment.

Mr. Chairman, it is with a good deal of reluctance that I rise in opposition to

the amendment offered by my friend and colleague, the gentleman from Virginia (Mr. FISHER). But it is only with a sense of duty that I do this. I believe that this amendment would in fact vitiate the bill. If not entirely, I believe it would so weaken it and make it so meaningless as to be inconsequential as to reform.

First of all, I think it is clear here that what we are trying to do is restore what we feel are constitutional rights to the Federal employee, and what the amendment does is this: It says that it is all right for the Federal employee to exercise his constitutional rights with regard to State offices or with regard to local offices, but it is wrong for him to exercise those rights with regard to Federal offices.

I think this is not the correct approach to the solving of a problem that is this basic, because it goes to a matter of a person's rights.

I am especially disturbed with the argument that says, "Well, most of them do not want these rights anyway." Every time we talk about basic constitutional rights we seem to get this argument that "They are really happy that way, so leave them alone, because those folks really like it that way." The argument goes on to say, "There is no reason to give them the vote. They are happy the way they are."

Mr. Chairman, I do not think this is right. I have talked to many Federal employees who say, "We are interested in what goes on in our country, and we do want to participate."

I will point out to the Members of this body that the amendment does more than say they cannot participate in a Federal election. As my colleague pointed out, if there was a joint ballot, including a Federal office, they could not hand out that ballot. As the amendment points out very clearly, if in fact they wanted to serve on a committee or hold an office on a Democratic or Republican committee, this amendment would prohibit them from doing that, whether it had to do with a Federal, State, or local election.

I feel that it is very important this House go on record as being in support of the constitutional rights of Federal employees. I think it is very important that we institute this reform, and I believe this would in fact take any real thrust away from this bill if we were to adopt the amendment on the floor.

Mr. Chairman, I urge my colleagues to vote against the amendment.

Mr. FISHER. Mr. Chairman, will the gentleman yield?

Mr. HARRIS. I will be happy to yield to my colleague, the gentleman from Virginia.

Mr. FISHER. Mr. Chairman, I do not really know of any constitutional right that would be denied under the bill or under my amendment.

I recognize that what I offer is a compromise between two very worthy goals. One is complete and full political activity by Federal employees, and the other is protection of their rights in their employment and a fair shake from their supervisors.

Mr. Chairman, in the light of what has happened in the last 2 or 3 years, I think my compromise is the right compromise.

Mr. HARRIS. Mr. Chairman, there was never doubt in my mind, may I say for the benefit of my distinguished friend, the gentleman from Virginia, that he feels this way. There was never a doubt in my mind that I am clearly of the opinion that I think he is wrong in thinking this way.

The protections built into this bill are very essential. These provisions increase the enforcement power and they prohibit the misuse of authority and coercion to force any person to participate. These are important reforms contained in this bill.

What I think is wrong is to put an amendment in this bill that says that they can exercise those rights but we must make sure it does not apply to the President or to the Congress.

Mr. CLAY. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendments.

(Mr. CLAY asked and was given permission to revise and extend his remarks.)

Mr. CLAY. Mr. Chairman, I rise in opposition to this amendment because it would "gut" a major provision of the bill. It would also return us to the very fragmentation of the regulation of permissible political activity of Federal employees which this bill seeks to avoid.

The right of these employees to full political participation includes the right to participate in shaping and development of important decisions. So long as their activities do not interfere with the public interest, Federal employees should be free to seek any elective office—public or party. The bill already provides strong controls to insure that such candidacy does not detract from the integrity of the merit system.

The amendment, by enabling senior officials within the national administration to seek elective office, would also establish a double standard for individual freedoms. Cabinet level and excepted officials could further strengthen their influence—lower level competitive employees could not. What kind of equity is this?

Finally, this Committee and other predecessor bodies have pointed to the fragmented nature and coverage of the Hatch Act. That is one of its most serious deficiencies. This proposal would tend to turn us back toward that discredited position.

I urge my colleagues to reject this ill-advised amendment.

Mr. SEIBERLING. Mr. Chairman, will the gentleman yield?

Mr. CLAY. I yield to the gentleman from Ohio.

Mr. SEIBERLING. Mr. Chairman, the gentleman from Virginia (Mr. HARRIS) referred to the preservation of the constitutional rights of Federal employees to run for public office, and I would like to ask this question:

I notice in the minority views in the committee report, on page 67, the following statement appears:

As recently as 1973, the U.S. Supreme Court, in its decision on the constitutionality of the Hatch Act stated, "Our judgment is that neither the first amendment nor any other provision of the Constitution invalidates a law . . . barring political conduct by Federal employees."

In view of that decision, I wonder if it is correct to say that we are protecting a constitutional right, since the Supreme Court has said that Federal employees' rights can be so limited.

Mr. HARRIS. Mr. Chairman, will the gentleman yield?

Mr. CLAY. I yield to the gentleman from Virginia.

Mr. HARRIS. Mr. Chairman, I would like to answer my colleague, the gentleman from Ohio. As a matter of fact, a minority member of the committee brought that point up when we were discussing the bill during general debate.

The case that is cited has in my opinion a very restricted application with respect to the many constitutional rights which I think a Federal employee has. This amendment does not go just to the issue of running as a candidate; this amendment goes to serving on a committee; this amendment goes to holding office in one of the parties or committees.

Mr. Chairman, I think clearly these are constitutional questions. I must admit, even though the Supreme Court has spoken with respect to the protection of some constitutional rights, that throughout the history of this country there have been times when I have disagreed with them.

Mr. SEIBERLING. Mr. Chairman, will the gentleman yield for one more question?

Mr. CLAY. I yield to the gentleman from Ohio, yes.

Mr. SEIBERLING. Are we not dealing

here, then, basically with a question of policy as to what should be the law rather than a question of a constitutional right?

Mr. CLAY. To answer the gentleman, if he would read the court opinion, the superior court said that the Congress could constitutionally limit the political activities of their employees. It said that it is the responsibility of the Congress to decide whether or not public employees may or may not engage in political activities.

Mr. Chairman, I urge defeat of this amendment. I urge my colleagues to defeat it. I urge them to support the position of the committee.

Mr. DERWINSKI. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendments.

(Mr. DERWINSKI asked and was given permission to revise and extend his remarks.)

Mr. DERWINSKI. Mr. Chairman, in rising in support of the amendment, I apologize to the gentleman from Virginia (Mr. FISHER) since I made it plain that I consider this bill unamendable. But at the same time I do recognize that this amendment is an effort to clear up the vagueness and the real overkill that is involved in this attack on the Hatch Act.

I am most impressed with the statistic which the gentleman from Virginia (Mr. FISHER) gave us on the poll he recently took among his constituents. If I recall the figure, 59 percent support the retention of the present Hatch Act.

The gentleman has a district which is heavily impacted with Federal employees, just as are other districts in Virginia and Maryland. Therefore, it seems to me that this kind of poll would be coming from a knowledgeable group of people, people knowledgeable on this subject of the Hatch Act, whereas, frankly, most of our constituents are not that well versed on the Hatch Act unless they happen to be Federal employees, who are in a minority in the rest of the country.

Mr. Chairman, I think the gentleman has attempted to approach this in a practical fashion. He has concentrated on making these Federal employees eligible for a part-time, basically local position, and that would be in keeping with the non-partisan nature of most of those positions across the country.

Mr. Chairman, I think that this amendment helps make a bad bill partially tolerable; and if I am not providing this amendment with the kiss of death, I urge its support.

Mr. GUDE. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendments.

(Mr. GUDE asked and was given permission to revise and extend his remarks.)

Mr. GUDE. Mr. Chairman, the gentleman from Virginia (Mr. FISHER), my colleague, I am happy to see has offered this amendment.

I think his poll clearly shows what I felt was the case in my district and what I think is the case generally with civil servants across this country.

Supporters of this bill claim that the Hatch Act represents Federal employees into feeling like disenfranchised citizens. These claims are not well founded. Nathan Wolkomir, president of National Federation of Federal Employees, in the April 30, 1975 Federal Times, cites a 1967 poll of thousands of members where 89% objected to tampering with the Hatch Act. And, according to the May 4, 1975 Washington Star-News, 48 of 51 Government personnel directors oppose this bill. With such strong opposition, Congress should think twice before amending the Hatch Act.

Mr. Chairman, I hope that the amendment of the gentleman from Virginia (Mr. FISHER) is going to be adopted. It still does not take care of the problem of the conflict of interest which is particularly going to face Federal employee-politicians here in the metropolitan area who are county executives, county councilmen, or county supervisors.

If a Federal employee were allowed to seek partisan political office, his Federal position and his personal politics would be hopelessly confusing to the public.

One witness speaking on H.R. 8617—a city manager—questioned public skepticism of the after hour distinction—that the public eye ceases to see the Federal employee in his official capacity after hours—in this way:

Each of us in the public service, and I will include myself, are public servants 24 hours a day. And we could never pretend that we are not acting in a private role. When you meet a public employee or anyone for that matter, the first question you ask is "What do you do?"

A 1947 high court ruling upholding the constitutionality of the Hatch Act reiterates the impracticality of the off-duty distinction. The court noted:

The influence of political activity by government employees, if evil in its effects on the Service, the employees or the people dealing with them, is hardly less so because the activity takes place after hours.

The other day, I spoke with a group of Federal employees who select contractors to build technically superior weapons for the Defense Department. They said:

Supposing that 3 different companies are bidding on a new airplane contract. Further

suppose that all 3 companies operate in different states and thus would supply many new jobs in their respective states. The fact that one of those involved in the contract selection is running for office or even managing a political campaign in one of the bidder's states could tip the scales on a contract decision.

These men are world's experts on aircraft design and their decisions directly affect the Nation's security. They want to continue to make technically professional and objective decisions.

The Federal employee has a decision to make: Does he wish to be a civil servant or a political officeholder?

The point here is that there is a significant difference between participating in the election process—as a civil servant is currently allowed to do in many, many ways—and vying for a position of political leadership.

The Hatch Act prohibitions insure that the party in power does not turn the Federal work force into an organized instrument for affecting the outcome of elections.

If you think this is absurd, let me remind you that just several years ago a 100-page document was compiled in the White House as a guide to the political referral units in the various Government departments and agencies on how to fill career positions with political patronage candidates and how to get rid of unwanted career employees.

A civil servant works and is paid for by the public. There is no question in my mind that the public interest must, therefore, come before the right of a civil servant to run for a full-time political office if that office threatens to interfere with the nonpartisan administration of good government.

So I hope we do adopt the amendment offered by the gentleman from Virginia (Mr. FISHER). I wish we could go further but I do support it and urge its adoption.

Mrs. SPELLMAN. Mr. Chairman, I move to strike the requisite number of words and I rise in opposition to the amendments.

(Mrs. SPELLMAN asked and was given permission to revise and extend her remarks.)

Mrs. SPELLMAN. Mr. Chairman, I, too, served on the Employee Political Rights Subcommittee which held extensive hearings and produced a bill that represents a fair and equitable response to the needs of Federal employees. Our subcommittee listened to the people who are more directly affected by the Hatch Act—we even held hearings in Riverdale, Md., in my own district as well as in

Annandale, Va., St. Louis, Mo., et cetera—all areas heavily impacted by the large number of Federal employees who live in those areas. We held hearings in the evenings so that Federal employees could have a chance to testify on this legislation. What we heard during those hearings was a strong plea to revise the restrictions of the Hatch Act so that these employees can more freely participate in our political process.

What I heard from my own constituents reflected that plea. I announced to them that I would vote the way they told me on this issue, and they told me in overwhelming margins that they wanted changes made. Federal employees wrote telling me to revise the Hatch Act so that they could freely participate in our democratic process.

Some of this desire to change the Hatch Act stems from the confusion that the vagueness of present-day regulations causes. This very vagueness acts as a restraint against the employee who considers becoming involved in any political actions, leaving our political system the poorer for the loss. We all know of the apathy that creeps among the electorate. Why should we continue to maintain the barricades that have kept so many Federal employees who wish to participate from doing so? Particularly today, I should think that we in the Congress

would gladly do everything we could to encourage, not discourage, participation in the political process.

One very important point must, I think, be made. And that is that H.R. 8617 increases, rather than decreases Federal employee protection in this area. In keeping with our committee's feeling that any law or legislation restricting political activities of Federal employees should do so clearly and expressly. We worked to carefully detail protections for the rights of those employees in order to avoid the confusion and apathy of the past. So, we have provisions that prohibit the use of official authority or influence for political purposes. Under this provision supervisors cannot promise benefits for or threaten reprisals against a fellow employee for political actions. The provisions forbid coercion of Federal employees to vote or not to vote in any manner other than that which the employee desires, and they forbid coercion, through threat of loss of job or promotion, for example, for not taking part, or for taking part, in any political activities.

Solicitation of contributions from Federal employees by other employees is forbidden, and the solicitation of contributions in any room or building that is

used for official Government purposes is prohibited. We included a provision to protect those individuals whose salary is paid through a Federal grant or Federal funds of any kind even though that person is not directly on the Federal payroll.

Employees cannot engage in political activity while on duty, while in a room or building in which that employee is employed by the Government, or while wearing the uniform or official insignia that identifies the office or position of the employee.

Finally, and perhaps most importantly, H.R. 8617 establishes a centralized organization to which the Federal employee can go if the above prohibitions have been violated. The Board of Political Activities of Federal Employees has the power to hear and decide cases involving violations of those protections. Amendments will set specific time limits for the filing of claims and counterclaims so that adjudication will not be prolonged beyond the point of effectiveness. In addition, we have set stiff penalties for those violators of the law, up to and including loss of position. Finally, we have established an affirmative education program through the Civil Service Commission to inform each Federal employee of their right of political participation every year.

Those in opposition to this bill will say that Federal employees cannot serve both an impartial civil service and a partisan political party or activist group. I do not believe that the political activities of a Federal employee will affect his work performance any more than such activities of a construction worker or of a businessman or of a teacher will affect his work. I think we have seen, in these past few years, that upper-level Federal employees who are not restricted now, and I am speaking of employees of the White House and of the executive branch in particular, do serve their party's interests

while on the job. This needs to be curtailed, and the Hatch Act provisions in H.R. 8617 will do that.

What better way to restore public confidence in the civil service than by setting specific limits on those activities in which the Federal employee can and cannot become involved. No longer would the public be confused as to which master the Federal employee is serving, anymore than they are now confused as to which master the businessman, or the secretary, or the store clerk or the carpenter is serving when he takes his off-hours to do some "politicking." They will know, the Federal employee will know, and his supervisors will know, exactly what the employee can do politically.

There will be amendments offered during our work on this bill to prohibit Federal employees from seeking any partisan elective public office or any partisan elective party office and to prohibit Federal employees from running for Federal office or for full-time State or local office. I urge my colleagues to oppose these amendments. They are designed to "protect" the employee right out of his political rights, and will deny active employee involvement in the entire electoral process, leaving those employees little better off than they are now. The right to run for political office is a part of our heritage or participatory democracy. As long as the candidacy for office does not interfere with the employee's effectiveness at work, his right to run for any office should not be denied.

An amendment I hope my colleagues will support would require mandatory leave for candidates for elective office, thus insuring what they previously mentioned amendments seek to do: Protect the employer as well as the employee without denying the employee his rights to participate in the political process. This is, I offer, the more equitable way to meet any conflicts that might arise.

In the final analysis, H.R. 8617 is a good bill, and deserving of wide support. I urge my colleagues to join me in restoring political rights, with adequate protection, to Federal employees by supporting H.R. 8617.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Virginia (Mr. FISHER).

The question was taken; and on a division (demanded by Mr. CLAY) there were ayes 30, noes 18.

Mr. CLAY. Mr. Chairman, I demand a recorded vote and, pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. The Chair will count. Sixty-two Members are present, not a quorum.

The Chair announces that pursuant to clause 2, rule XXIII, he will vacate proceedings under the call when a quorum of the Committee appears.

Members will record their presence by electronic device.

The call was taken by electronic device.

QUORUM CALL VACATED

The CHAIRMAN. One hundred Members have appeared. A quorum of the Committee of the Whole is present. Pursuant to rule XXIII, clause 2, further proceedings under the call shall be considered as vacated.

The Committee will resume its business.

RECORDED VOTE

The CHAIRMAN. The pending business before the Committee is the demand by the gentleman from Missouri (Mr. CLAY) for a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 147, noes 260, not voting 26, as follows:

[Roll No. 623]

AYES—147

Abdnor	Frey	Mottl
Anderson, Ill.	Fuqua	Myers, Ind.
Archer	Goldwater	Myers, Pa.
Armstrong	Gonzalez	Nichols
Ashbrook	Goodling	O'Brien
Bafalis	Gradison	Pettis
Bauman	Grassley	Pickle
Beard, Tenn.	Gude	Poage
Bell	Guyer	Pressler
Bennett	Hagedorn	Quie
Breckinridge	Haley	Regula
Broomfield	Hammer-	Rhodes
Brown, Ohio	schmidt	Robinson
Broyhill	Hansen	Roncalio
Burke, Fla.	Harsha	Ruppe
Burleson, Tex.	Hastings	Satterfield
Butler	Hays, Ohio	Schneebeli
Byron	Hébert	Schulze
Carter	Hinshaw	Sebelius
Casey	Holt	Seiberling
Cederberg	Hutchinson	Shriver
Clausen,	Hyde	Shuster
Don H.	Jarman	Skubitz
Cleveland	Jeffords	Smith, Nebr.
Cohen	Johnson, Colo.	Snyder
Collins, Tex.	Kasten	Stanton,
Conable	Kazen	J. William
Conlan	Kelly	Steelman
Cotter	Kindness	Steiger, Ariz.
Coughlin	Lagomarsino	Steiger, Wis.
Crane	Landrum	Sullivan
Daniel, Dan	Lent	Talcott
Daniel, R. W.	Long, Md.	Taylor, Mo.
de la Garza	Lott	Taylor, N.C.
Dent	Lujan	Thone
Derwinski	McClory	Thornton
Devine	McDonald	Treen
Dickinson	McEwen	Vander Jagt
Downing, Va.	McKay	Vander Veen
Duncan, Tenn.	McKinney	Waggonner
du Pont	Martin	Wampler
English	Mazzoli	Whitehurst
Erlenborn	Michel	Wiggins
Esch	Miller, Ohio	Wilson, Bob
Fenwick	Mills	Winn
Findley	Mitchell, N.Y.	Wylie
Fish	Mollohan	Young, Fla.
Fisher	Montgomery	
Flynt	Moore	
Forsythe	Moorhead,	
Fountain	Calif.	
Frenzel	Mosher	

NOES—260

Abzug	Breaux	Diggs
Adams	Brinkley	Dingell
Addabbo	Brodhead	Downey, N.Y.
Alexander	Brooks	Drinan
Ambro	Brown, Calif.	Early
Anderson,	Brown, Mich.	Eckhardt
Calif.	Buchanan	Edgar
Andrews, N.C.	Burgener	Edwards, Ala.
Andrews,	Burke, Calif.	Edwards, Calif.
N. Dak.	Burke, Mass.	Ellberg
Annunzio	Burlison, Mo.	Emery
Ashley	Burton, John	Eshleman
Aspin	Burton, Phillip	Evans, Colo.
AuCoin	Carney	Evans, Ind.
Badillo	Carr	Fascell
Baldus	Chappell	Fithian
Barrett	Chisholm	Flood
Baucus	Clancy	Florio
Beard, R.I.	Clay	Flowers
Bedell	Cochran	Foley
Bergland	Collins, Ill.	Ford, Mich.
Bevill	Conte	Ford, Tenn.
Blaggi	Corman	Gaydos
Biester	Cornell	Gialmo
Bingham	D'Amours	Gibbons
Blanchard	Daniels, N.J.	Gilman
Blouin	Danielson	Ginn
Boland	Davis	Green
Boiling	Delaney	Hall
Bonker	Dellums	Hamilton
Bowen	Derrick	Hanley

Hannaford	Maguire	Rose
Harkin	Mahon	Rosenthal
Harrington	Mathis	Rostenkowski
Harris	Matsunaga	Roush
Hawkins	Meeds	Rousselot
Hayes, Ind.	Melcher	Roybal
Heckler, W. Va.	Metcalfe	Runnels
Heckler, Mass.	Meyner	Russo
Hefner	Mezvinsky	Ryan
Heinz	Mikva	St Germain
Helstoski	Miller, Calif.	Santini
Henderson	Mineta	Sarasin
Hicks	Minish	Sarbanes
Hightower	Mink	Scheuer
Hillis	Mitchell, Md.	Schroeder
Holland	Moakley	Sharp
Holtzman	Moffett	Shipley
Horton	Morgan	Simon
Howard	Moss	Slack
Howe	Murphy, Ill.	Smith, Iowa
Hubbard	Murphy, N.Y.	Spellman
Hughes	Murtha	Spence
Hungate	Natcher	Staggers
Ichord	Neal	Stanton,
Jacobs	Nedzi	James V.
Jenrette	Nix	Stark
Johnson, Calif.	Nolan	Steed
Johnson, Pa.	Nowak	Stephens
Jones, Ala.	Oberstar	Stokes
Jones, N.C.	Obey	Stratton
Jones, Tenn.	O'Hara	Stuckey
Jordan	Ottinger	Studds
Karth	Patten, N.J.	Symington

Kastenmeier	Patterson,	Symms
Kemp	Calif.	Thompson
Ketchum	Pattison, N.Y.	Traxler
Keys	Pepper	Tsongas
Koch	Perkins	Ullman
Krebs	Peyser	Van Deerlin
Krueger	Pike	Vigorito
LaFalce	Preyer	Walsh
Latta	Price	Waxman
Leggett	Pritchard	Weaver
Lehman	Railsback	Whalen
Levitas	Randall	White
Litton	Rangel	Whitten
Lloyd, Calif.	Rees	Wilson, Tex.
Lloyd, Tenn.	Reuss	Wirth
Long, La.	Richmond	Wolf
McCloskey	Riegle	Wright
McCollister	Rinaldo	Yates
McCormack	Risenhoover	Yatron
McDade	Roberts	Young, Alaska
McFall	Rodino	Young, Ga.
McHugh	Roe	Young, Tex.
Macdonald	Rogers	Zablocki
Madigan	Rooney	Zeferetti

NOT VOTING—26

Boggs	Jones, Okla.	Sikes
Brademas	Madden	Sisk
Clawson, Del	Mann	Solarz
Conyers	Milford	Teague
Dodd	Moorhead, Pa.	Udall
Duncan, Oreg.	O'Neill	Vanik
Evins, Tenn.	Passman	Wilson, C. H.
Fary	Patman, Tex.	Wylder
Fraser	Quillen	

Messrs. GILMAN, WRIGHT, ROBERTS, CHAPPELL, CONTE, and SCHEUER changed their vote from "aye" to "no."

Messrs. BEARD of Tennessee and BELL changed their vote from "no" to "aye."

So the amendments were rejected.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. GILMAN

Mr. GILMAN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. GILMAN: Page 20, line 7, insert immediately before the quotation marks the following: "However no regulation or rule of the Commission or any amendment thereto shall take effect unless—

"(1) the Commission transmits such rule, regulation, or amendments to the Congress; and

"(2) neither House of Congress has disapproved such sale, regulation of amendment within thirty legislative days from the date of transmittal to the Congress."

Mr. GILMAN (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

(Mr. GILMAN asked and was given permission to revise and extend his remarks.)

Mr. GILMAN. Mr. Chairman, in the course of the debate on this measure, it

has become apparent that the term "political activity" will be defined not by this legislation, but by the Civil Service Commission.

This amendment will require the Civil Service Commission to submit any of its proposed regulations defining the term "political activity" to the Congress for its consideration. If Congress fails to act within 30 legislative days, such regulations would be effective.

Accordingly, Mr. Chairman, I urge my colleagues to adopt this amendment.

Mr. CLAY. Mr. Chairman, I move to strike the last word.

Mr. Chairman, we accept the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York (Mr. GILMAN).

The amendment was agreed to.

Mr. CLAY. Mr. Chairman, I ask unanimous consent that all debate on the bill and all amendments thereto end in 20 minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from Missouri?

Mr. ICHORD. Mr. Chairman, I object.

The CHAIRMAN. Objection is heard.

Mr. CLAY. Mr. Chairman, I move that all debate on the bill and all amendments thereto close in 20 minutes.

The CHAIRMAN. The question is on the motion offered by the gentleman from Missouri (Mr. CLAY).

The question was taken; and on a division (demanded by Mr. DERWINSKI) there were—ayes 57, noes 35.

So the motion was agreed to.

The CHAIRMAN. The Chair recognizes the gentleman from California (Mr. HINSHAW).

AMENDMENT OFFERED BY MR. HINSHAW

Mr. HINSHAW. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. HINSHAW: On page 7, line 2, strike out "or" and in line 4, strike out the period and insert a comma and the word "or", and immediately following line 4, add the following:

"(4) In any geographic area outside the area encompassing the political subdivision of the elective office for which he is a candidate, or for which he is supporting the candidacy of any other person, provided however, that such political activity shall be limited to the political subdivision in which he is a resident."

(Mr. HINSHAW asked and was given permission to revise and extend his remarks.)

Mr. HINSHAW. Mr. Chairman, the purpose of this amendment may be construed by some to restrict the political activity of Federal employees but I

think it is a good amendment for the reason that fears have been expressed that there could be pressure placed on large numbers of Federal employees to go from one geographic area to another so as to campaign either for or against candidates of their choice.

I think we ought to allay these fears. I feel that we ought to let Federal employees engage in political activities in the area of which they are a resident.

For example, a person who lives in any congressional district could campaign for or against anyone in that congressional district. For a U.S. Senator they could, of course, campaign statewide. As far as campaigning for city council, they could only campaign within the councilmanic district.

So it would seem that in order to allay the expressed fear that we should restrict the political activities of Federal employees to only those areas of which they are a resident.

Mr. CLAY. Mr. Chairman, if the gentleman will yield for a few questions, I would ask the gentleman from California if a relative of his did not live in his congressional district and he were not a Federal employee, would it be permissible for him to come into your district and campaign for you?

Mr. HINSHAW. Yes.

Mr. CLAY. But the gentleman would take that same right away from a Federal employee who might want to campaign for a father or a son, you would give that right away?

Mr. HINSHAW. No, I am in favor of giving Federal employees the right to campaign but only in the areas in which they are resident.

Mr. CLAY. But the gentleman would not take that right away from a relative of his who was not a Federal employee?

Mr. HINSHAW. No, I would not.

Mr. CLAY. I thank the gentleman.

The CHAIRMAN. Do any of the Members for whom time was reserved wish to address themselves to the amendment offered by the gentleman from California (Mr. HINSHAW)?

There being none, the question is on the amendment offered by the gentleman from California (Mr. HINSHAW).

The amendment was rejected.

AMENDMENT OFFERED BY MR. ICHORD

Mr. ICHORD. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. ICHORD: Amend H.R. 8617, page 7, by striking all the language after section 7326 and inserting the following: "an employee may not hold, or be a candidate for:

"(1) Any elective public office unless such office is—

"(A) a part-time elective public office of a State or political subdivision of a State or
"(B) to be held by an individual elected in a nonpartisan election, or".

The CHAIRMAN. The Chair recognizes the gentleman from Missouri (Mr. ICHORD).

(By unanimous consent, Messrs. BURLISON of Missouri, CHAPPELL, and RUSSO yielded their time to Mr. ICHORD.)

Mr. ICHORD. Mr. Chairman, what I have done in this amendment is to take the first eight lines of the Fisher amendment, omitting the rest of the Fisher amendment.

I will be quite frank, Mr. Chairman, as to what I wish to do in this amendment and I want to make it clear that I do not offer this amendment out of my concern for my own protection or thinking that I cannot take care of myself in any election in which I may be filed against by a prospective candidate who may be a Federal employee, but I offer this amendment, Mr. Chairman, because I am afraid that the Members, if they pass this bill, are going to rue the day that they make Federal employment a training ground for prospective candidates for Congress.

I came to this body, Mr. Chairman, 15 years ago. I ran against an incumbent Democrat Congressman. For the first time in the history of Missouri an incumbent Congressman was defeated. One of the reasons why I defeated that very distinguished Member of this body was that as speaker of the house in the State of Missouri I had 125 employees scattered throughout the eight congressional districts of Missouri, and let me tell the Members, as all the political animals in this body well know, I had a very good political organization.

Mr. Chairman, if we pass this bill in its present form—it has been altered, I know, and we require Federal employees to take only 90 days' leave to run for the office of Congressman but still they can take 30 days leave of that 90 days with pay—and with the fiscal problems we face in this country, every time we possibly vote against the 4-day work week or we vote against a 7-percent pay raise in favor of a 5-percent pay raise, and we may very well do so, we can easily be faced with a Federal employee candidate in both the primary and the general elections. I doubt if many will be elected but their candidacies, Mr. Chairman, will constitute harassment and will possibly inhibit the free processes of this institution also, Mr. Chairman, members who are challenged by Federal employees may be inclined to be vindictive toward the agency by which the candidate is employed, thus further injuring civil service and our political processes. I offer this,

Mr. Chairman, not out of any concern for myself. I feel I can take care of myself, but I feel it will inhibit the political processes of this body. I hope the Members pass this amendment and do not turn Federal employment into a training ground for prospective candidates for Members of Congress. They have the protection, Mr. Chairman, of civil service and to have that protection they should be required to resign from that protection.

Let me point out that we are really putting them in a privileged position here. Take, for example, a television announcer. If he decides to run for the office of Congress, he has to resign under equal time provisions of the Federal Communications Act. So we are not penalizing the Federal employee. I think it is fair that he should resign to have the protection of civil service. He does not have to hold civil service employment. He can get some other kind of employment, but he should not be permitted to take leave, and leave under the Rousset amendment with at least 30 days' pay, to run for public office.

Mr. JOHN L. BURTON. Mr. Chairman, will the gentleman yield?

Mr. ICHORD. I yield to the gentleman from California.

Mr. JOHN L. BURTON. I thank the gentleman for yielding.

I appreciate the gentleman's comments. I think we might do better to pass a Federal statute making it a felony to challenge an incumbent, rather than take this half approach. I would have to vote against the amendment, because it really does not go far enough.

Mr. ICHORD. Facetiously, I will leave that up to the gentleman from California.

Mr. JOHN L. BURTON. I thank the gentleman.

Mr. ICHORD. Mr. Chairman, I yield back the remainder of my time.

Mr. CLAY. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, we have already provided 90 days' mandatory leave in the event a person should seek Congress. I think that the House has already worked its will on this particular provision when we defeated the Fisher amendment. So I urge my colleagues to defeat the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Missouri (Mr. ICHORD).

The question was taken; and on a division (demanded by Mr. ICHORD) there were—ayes 41, noes 52.

So the amendment was rejected.

The CHAIRMAN. The Chair recognizes the gentleman from Ohio (Mr. SEIBERLING).

Mr. SEIBERLING. I would like to ask the chairman of the committee a question. I notice that on page 48 "political contribution" is defined as—

A gift, . . . made for the purpose of influencing the . . . election of any individual . . .

That is section 7322(3)(A). Reading that definition in conjunction with section 7324(1), the latter says literally that a Federal employee may not give or offer to give a gift to any individual for the purpose of influencing an election in order to influence any individual to vote for or against any candidate or measure in any election.

I ask whether that makes sense, and if not, what is intended by section 7324?

Mr. CLAY. The intention of section 7324 is to prohibit anyone from buying a vote. I think the language was identical in the Code. We took it from there.

Mr. SEIBERLING. It says they cannot give a contribution made to influence an election, for the purpose of influencing someone to vote in an election. It seems to me a redrafting is in order here before this gets to a final vote by the House and the Senate.

I suggest when the bill gets to conference that you go to work on that section. This is a criminal statute. I think any ambiguity like that ought to be eliminated.

Mr. CLAY. I agree with the gentleman. We will see if we cannot clarify it when we get to conference.

The CHAIRMAN. The Chair recognizes the gentleman from Virginia (Mr. HARRIS).

Mr. HARRIS. Mr. Chairman, I rise to urge my colleagues to support this measure. I do not think it is as good as it could be, but it represents a return of basic rights to the Federal employees.

I am pleased that the House has made it clear a person does not have to give up his rights to participate in our society to become a Federal employee. I think this means we can recruit people with the very best caliber for Federal employment without saying at that point they must become emasculated as far as any participation in real political activity is concerned.

I think this is as important as any bill we have passed as far as restoring people's rights and those in the Government that represent them.

It happens that quite a few of the individuals I represent are part of the Federal Government. One of them out there today may be prepared to run against

me. I say that is the way it should be. I think this bill represents a real step forward in our Government.

The CHAIRMAN. The Chair recognizes the gentleman from Hawaii (Mr. MATSUNAGA).

(Mr. MATSUNAGA asked and was given permission to revise and extend his remarks.)

Mr. MATSUNAGA. Mr. Chairman, as a sponsor of similar legislation, I am pleased to voice my support for H.R. 8617, the proposed Hatch Act Reform. The members of the Post Office and Civil Service Committee are to be commended for their fine efforts in bringing this bill to the floor. I congratulate the gentleman from Missouri (Mr. CLAY) for the leadership and initiative he has shown in the formulation of the bill.

The Hatch Act is as essential today as when it was enacted, but this does not mean improvements cannot be made. Changes are needed to bring the law in line with the realities of the 1970's. For example, the Federal Election Campaign Act Amendments of 1974 contained a provision that lifts most of the restrictions from State and local government employees who had previously been subject to the Hatch Act.

As of January 1, 1975, these workers, whose positions were financed from Federal funds, can legally serve as officers in political parties, solicit votes on behalf of partisan candidates, and so on down the list of activities previously prohibited under the Hatch Act's dictum of "no active participation in political management or in political campaigns."

This relaxation brought the general practice for those employees more in line with the parallel law in Hawaii, where State, county, and city employees are permitted to engage in a full range of political activities, but only in their own time.

However, Federal employees did not receive any liberalization of the restrictions on their political activities, as a result of the 1974 law. The time has come for further, more fundamental changes in the Hatch Act.

It is time that Federal employees be elevated to first class citizenship and be permitted to exercise all of their rights with respect to political activity, to participate voluntarily in the political life of our Nation from which they have been largely prohibited.

I believe it possible to expand considerably the scope of permissible political participation by Federal employees, while at the same time strengthening the safeguards against abuses. That is the objective of H.R. 8617.

Mr. Chairman, the committee evidently sought to strike a balance between seemingly competing, legitimate interests; namely, those calling for reform of giving Government employees more rights to free speech and free association in the political process, and those who argue that present Hatch Act restrictions are necessary to preserve integrity in Government. I believe the committee was able to strike that balance in H.R. 8617, a balance that will bring about changes that would make the Hatch Act more equitable and workable. The bill encourages employees to exercise their right of voluntary political participation. It provides tighter employee protection against coercion than does the existing law, and it prohibits political activity which might even appear to conflict with the employee's official responsibilities.

H.R. 8617 is landmark legislation, Mr. Chairman, and I urge my colleagues to approve it overwhelmingly.

The CHAIRMAN. The Chair recognizes the gentlewoman from Maryland (Mrs. SPELLMAN).

(Mrs. SPELLMAN asked and was given permission to revise and extend her remarks.)

Mrs. SPELLMAN. Mr. Chairman, I will only use a moment of my time. I merely wish to state that I strongly favor this measure. The bill does, indeed, restore full citizenship to Federal employees and at the same time it provides full protection. That is a superb combination and deserves the full support of this House.

The CHAIRMAN. The Chair recognizes the gentleman from Illinois (Mr. DERWINSKI).

Mr. DERWINSKI. Mr. Chairman, may I point out that when this bill came to the floor it was, in fact, one of the more imperfect products of both draftsmanship, as well as political approach. It has been further complicated by numerous amendments.

I frankly cannot think of a measure at this stage in the deliberations with all the amendments having been exhausted that is as confusing to most Members.

Let me just sum up briefly the history of the Hatch Act. Thirty-six years ago a totally dominant Democratic Congress found it necessary to enact the Hatch Act to protect the public and to protect the Federal employees from pressures that had developed.

The Federal Government that exists today has three times as many Federal employees. It seems to me that, given 36 years of effective functioning, the Hatch Act is worthy of being preserved in its present form. The bill before us emas-

culates the Hatch Act, and it is actually a backward step.

It is a dangerous approach, I think, to pure misuse of the offices of the Federal Government. I think it will be detrimental to the public interest. It will further lower public esteem for the services of the Federal Government if there is any suspicion that the services provided are in any way politically tainted, or the employees are under pressure.

I judge this bill to be very ill-timed. I think it is a backward step, and I urge defeat of the measure.

The CHAIRMAN. Are there further amendments?

If not, under the rule the Committee rises.

Accordingly the Committee rose; and the Speaker having resumed the Chair, Mr. FOLEY, Chairman of the Committee of the Whole House on the State of the Union, reported that the Committee, having had under consideration the bill (H.R. 8617) to restore to Federal civilian and Postal Service employees their rights to participate voluntarily, as private citizens, in the political processes of the Nation, to protect such employees from improper political solicitations, and for other purposes, pursuant to House Resolution 731, he reported the bill back to the House with sundry amendments adopted by the Committee of the Whole.

The SPEAKER. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment? If not, the Chair will put them en gros.

The amendments were agreed to.

The SPEAKER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY
MR. DERWINSKI

Mr. DERWINSKI. Mr. Speaker, I offer a motion to recommit with instructions.

The SPEAKER. Is the gentleman opposed to the bill?

Mr. DERWINSKI. Quite emphatically, Mr. Speaker.

The SPEAKER. The gentleman qualifies, emphatically or otherwise.

The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. DERWINSKI moves to recommit the bill, H.R. 8617, to the Committee on Post Office and Civil Service with instructions to report the same back forthwith with the following amendment: Strike out all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "Federal Employees' Political Activities Act of 1975".

SEC. 2. (a) Chapter 73 of title 5, United States Code, is amended by adding the following subchapter:

"SUBCHAPTER IV—POLITICAL
ACTIVITIES

"§ 7361. Political participation

"It is the policy of the Congress that employees should be encouraged to fully exercise, to the extent not expressly prohibited by law, their rights of voluntary participation in the political processes of our Nation.

"§ 7322. Definitions

"For the purpose of this subchapter—

"(1) 'employee' means any individual, employed or holding office in the United States Postal Service; and a Congressional employee as defined by section 2107 of this title.

"(2) 'candidate' means any individual who seeks nomination for election, or election, to any elective office, whether or not such individual is elected, and, for the purpose of this paragraph, an individual shall be deemed to seek nomination for election, or election, to an elective office, if such individual has—

"(A) taken the action required to qualify for nomination for election, or election, or

"(B) received political contributions or made expenditures, or has given consent for any other person to receive political contributions or make expenditures, with a view to bringing about such individual's nomination for election, or election, to such office;

"(3) 'political contribution'—

"(A) means a gift, subscription, loan, advance, or deposit of money or anything of value, made for the purpose of influencing the nomination for election, or election, of any individual to elective office or for the purpose of otherwise influencing the results of any election;

"(B) includes a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a political contribution for any such purpose; and

"(C) includes the payment by any person, other than a candidate or a political organization, of compensation for the personal services of another person which are rendered to such candidate or political organization without charge for any such purpose;

"(4) 'superior' means an employee who exercises supervision of, or control or administrative direction over, another employee;

"(5) 'elective office' means any elective public office and any elective office of any political party or affiliated organization; and

"(6) 'Board' means the Board on Political Activities of Federal Employees established under section 7367 of this title.

§ 7363. Use of official authority or influence; prohibition

"(a) An employee may not directly or indirectly use or attempt to use the official authority or influence of such employee for the purpose of—

"(1) interfering with or affecting the result of any election; or

"(2) intimidating, threatening, coercing, commanding, influencing, or attempting to intimidate, threaten, coerce, command, or influence—

"(A) any individual for the purpose of interfering with the right of any individual to vote as such individual may choose, or of

causing any individual to vote, or not to vote, for any candidate or measure in any election;

"(B) any person to give or withhold any political contribution; or

"(C) any person to engage, or not engage, in any form of political activity whether or not such activity is prohibited by law.

"(b) For the purpose of subsection (a) of this section, 'use of official authority or influence' includes, but is not limited to, promising to confer or conferring any benefit (such as appointment, promotion, compensation, grant, contract, license, or ruling), or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, compensation, grant, contract, license, or ruling).

"§ 7364. Solicitation; prohibition

"An employee may not—

"(1) give or offer to give a political contribution to any individual either to vote or refrain from voting, or to vote for or against any candidate or measure, in any election;

"(2) solicit, accept, or receive a political contribution to vote or refrain from voting,

or to vote for or against any candidate or measure, in any election;

"(3) knowingly give or hand over a political contribution to a superior of such employee; or

"(4) knowingly solicit, accept, or receive, or be in any manner concerned with soliciting, accepting, or receiving, a political contribution—

"(A) from another employee (or a member of another employee's immediate family) with respect to whom such employee is a superior; or

"(B) in any room or building occupied in the discharge of official duties by—

"(i) an individual employed or holding office in the Government of the United States in the government of the District of Columbia, or in any agency or instrumentality of the foregoing; or

"(ii) an individual receiving any salary or compensation for services from money derived from the Treasury of the United States.

"§ 7365. Political activities on duty, etc.; prohibition

"(a) An employee may not engage in political activity—

"(1) while such employee is on duty,

"(2) in any room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States, in the government of the District of Columbia, or in any agency or instrumentality of the foregoing, or

"(3) while wearing a uniform or official insignia identifying the office or position of such employee.

"§ 7366. Leave for candidates for elective office

"(a) An employee who is a candidate for elective office shall, upon the request of such employee, be granted leave without pay for the purpose of allowing such employee to engage in activities relating to such candidacy.

"(b) Notwithstanding section 6302(d) of this title, an employee who is a candidate for

elective office shall, upon the request of such employee, be granted accrued annual leave for the purpose of allowing such employee to engage in activities relating to such candidacy. Such leave shall be in addition to leave without pay to which such employee may be entitled under subsection (a) of this section.

"§ 7367. Board on Political Activities of Federal Employees

"(a) There is established a board to be known as the Board on Political Activities of Federal Employees. It shall be the function of the Board to hear and decide cases regarding violations of sections 7363, 7364, and 7365 of this title.

"(b) The Board shall be composed of 3 members—

"(1) one member of which shall be appointed, with the confirmation of a majority of both Houses of the Congress, by the President and who shall serve as Chairman of the Board;

"(2) one member of which shall be appointed, with the confirmation of a majority of both Houses of the Congress, by the Speaker of the House of Representatives, after consultation with the majority leader of the House and the minority leader of the House; and

"(3) one member of which shall be appointed, with the confirmation of a majority of both Houses of the Congress, by the President pro tempore of the Senate, after consultation with the majority leader of the Senate and the minority leader of the Senate.

"(c) Members of the Board shall be chosen on the basis of their professional qualifications from among individuals who, at the time of their appointment, are employees (as defined under section 7362(c) of this title).

"(d) (1) Members of the Board shall serve a term of 3 years, except that of the members first appointed—

"(A) the Chairman shall be appointed for a term of 3 years,

"(B) the member appointed under subsection (b) (2) of this section shall be appointed for a term of 2 years, and

"(C) the member appointed under subsection (b) (3) of this section shall be appointed for a term of 1 year.

An individual appointed to fill a vacancy occurring other than by the expiration of a term of office shall be appointed only for the unexpired term of the member such individual will succeed. Any vacancy occurring in the membership of the Board shall be filled in the same manner as in the case of the original appointment.

"(2) If an employee who was appointed as a member of the Board is separated from service as an employee he may not continue as a member of the Board after the 60-day period beginning on the date so separated.

"(e) The Board shall meet at the call of the Chairman.

"(f) All decisions of the Board with respect to the exercise of its duties and powers under the provisions of this subchapter shall be made by a majority vote of the Board.

"(g) A member of the Board may not delegate to any person his vote nor, except as expressly provided by this subchapter, may any decisionmaking authority vested in the

Board by the provisions of this subchapter be delegated to any member or person.

"(h) The Board shall prepare and publish in the Federal Register written rules for the conduct of its activities, shall have an official seal which shall be judicially noticed, and shall have its office in or near the District of Columbia (but it may meet or exercise any of its powers anywhere in the United States).

"(i) The Civil Service Commission shall provide such clerical and professional personnel, and administrative support, as the Chairman of the Board considers appropriate and necessary to carry out the Board's functions under this subchapter. Such personnel shall be responsible to the Chairman of the Board.

"(j) The Administrator of the General Services Administration shall furnish the Board suitable office space appropriately furnished and equipped, as determined by the Administrator.

"(k)(1) Members of the Board shall receive no additional pay on account of their service on the Board.

"(2) Members shall be entitled to leave without loss of or reduction in pay, leave, or performance or efficiency rating during a period of absence while in the actual performance of duties vested in the Board.

"§ 7368. Investigation; procedures; hearing

"(a) The Civil Service Commission shall investigate reports and allegations of any activity prohibited by section 7363, 7364, or 7365 of this title.

"(b) As a part of the investigation of the activities of an employee, the Commission shall provide such employee an opportunity to make a statement concerning the matters under investigation and to support such statement with any documents the employee wishes to submit. An employee of the Commission lawfully assigned to investigate a violation of this subchapter may administer an oath to a witness attending to testify or depose in the course of the investigation.

"(c)(1) If it appears to the Commission after investigation that a violation of section 7363, 7364, or 7365 of this title has not occurred, it shall so notify the employee and the agency in which the employee is employed.

"(2) Except as provided in paragraph (3) of this subsection, if it appears to the Commission after investigation that a violation of section 7363, 7364, or 7365 of this title has occurred, the Commission shall submit to the Board and serve upon the employee a notice by certified mail, return receipt requested (or if notice cannot be served in such manner, then by any method calculated to reasonably apprise the employee)—

"(A) setting forth specifically and in detail the charges of alleged prohibited activity;

"(B) advising the employee of the penalties provided under section 7369 of this title;

"(C) specifying a period of not less than 30 days within which the employee may file with the Board a written answer to the charges in the manner prescribed by rules issued by the Board; and

"(D) advising the employee that unless the employee answers the charges, in writing, within the time allowed therefor, the

Board is authorized to treat such failure as an admission by the employee of the charges set forth in the notice and a waiver by the employee of the right to a hearing on the charges.

"(d)(1) If a written answer is not duly filed within the time allowed therefor, the Board may, without further proceedings, issue its final decision and order.

"(2) If an answer is duly filed, the charges shall be determined by the Board on the record after a hearing conducted by a hearing examiner appointed under section 3105 of this title, and, except as otherwise expressly provided under this subchapter, in accordance with the requirements of subchapter II of chapter 5 of this title, notwithstanding any exception therein for matters involving the tenure of an employee. The hearing shall be commenced within 30 days after the answer is filed with the Board and shall be conducted without unreasonable delay. As soon as practicable after the conclusion of the hearing, the examiner shall serve upon the Board, the Commission, and the employee such examiner's recommended decision with notice to the Commission and the employee of opportunity to file with the Board, within 30 days after the date of such notice, exceptions to the recommended decision. The Board shall issue its final decision and order in the proceeding no later than 60 days after the date the recommended decision is served. The employee shall not be removed from active duty status by reason of the alleged violation of this subchapter at any time before the effective date specified by the Board.

"(e)(1) At any stage of a proceeding or investigation under this subchapter, the Board may, at the written request of the Commission or the employee, require by subpoena the attendance and testimony of witnesses and the production of documentary or other evidence relating to the proceeding or investigation at any designated place, from any place in the United States or any territory or possession thereof, the Commonwealth of Puerto Rico, or the District of Columbia. Any member of the Board may issue subpoenas and members of the Board and any hearing examiner authorized by the Board may administer oaths, examine witnesses, and receive evidence. In the case of contumacy or failure to obey a subpoena, the United States district court for the judicial district in which the person to whom the subpoena is addressed resides or is served may, upon application by the Board, issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

"(2) The Board (or a member designated by the Board) may order the taking of depositions at any stage of a proceeding or investigation under this subchapter. Depositions shall be taken before an individual designated by the Board and having the power to administer oaths. Testimony shall be reduced to writing by or under the direction of the individual taking the deposition and shall be subscribed by the deponent.

"(3) An employee may not be excused from attending and testifying or from pro-

ducing documentary or other evidence in obedience to a subpoena of the Board on the ground that the testimony or evidence required of the employee may tend to incriminate the employee or subject the employee to a penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the employee is compelled to testify or produce evidence. No employee shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the employee is compelled, after having claimed the privilege against self-incrimination, to testify or produce evidence, nor shall testimony or evidence so compelled be used as evidence in any criminal proceeding against the employee in any court, except that no employee shall be exempt from prosecution and punishment for perjury committed in so testifying.

"(f) An employee upon whom a penalty is imposed by an order of the Board under subsection (d) of this section may, within 30 days after the date on which the order was issued, institute an action for judicial review of the Board's order in the United States District Court for the District of Columbia or in the United States district court for the judicial district in which the employee resides or is employed. The institution of an action for judicial review shall not operate as a stay of the Board's order, unless the court specifically orders such stay. A copy of the summons and complaint shall be served as otherwise prescribed by law and, in addition, upon the Board. Thereupon the Board shall certify and file with the court the record upon which the Board's order was based. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that the additional evidence may materially affect the result of the proceeding and that there were reasonable grounds for failure to adduce the evidence at the hearing conducted under subsection (d) (2) of this section, the court may direct that the additional evidence be taken before the Board in the manner and on the terms and conditions fixed by the court. The Board may modify its findings of fact or order, in the light of the additional evidence, and shall file with the court such modified findings or order. The Board's findings of fact, if supported by substantial evidence, shall be conclusive. The court shall affirm the Board's order if it determines that it is in accordance with law. If the court determines that the order is not in accordance with law—

"(1) it shall remand the proceeding to the Board with directions either to enter an order determined by the court to be lawful or to take such further proceedings as, in the opinion of the court, are required; and

"(2) it may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred by the employee.

"(g) The Commission or the Board in its discretion, may proceed with any investigation or proceeding instituted under this subchapter notwithstanding that the Commission or the head of an employing agency or department has reported the alleged violation to the Attorney General as required by section 535 of title 28.

§ 7369. Penalties

"(a) Subject to and in accordance with section 7328 of this title, an employee who is found to have violated any provision of sections 7363, 7364, or 7365 of this title shall, upon a final order of the Board, be—

"(1) removed from such employee's position, in which event that employee may not thereafter hold any position (other than an elected position) as an employee (as defined in section 7362(1) of this title) for such period as the Board may prescribe;

"(2) suspended without pay from such employee's position for such period as the Board may prescribe; or

"(3) disciplined in such other manner as the Board shall deem appropriate.

"(b) The Board shall notify the Commission, the employee and the employing agency of any penalty it has imposed under this section. The employing agency shall certify to the Board the measures undertaken to implement the penalty.

"§ 7370. Educational program; reports

"(a) The Commission shall establish and conduct a continuing program to inform all employees of their rights of political participation and to educate employees with respect to those political activities which are prohibited. The Commission shall inform each employee individually in writing, at least once each calendar year, of such employee's political rights and of the restrictions under this subchapter. The Commission may determine, for each State, the most appropriate date for providing information required by this subsection. Such information, however, shall be provided to employees employed or holding office in any State not later than 60 days before the earliest primary or general election for State or Federal elective office held in such State.

"(b) On or before March 30 of each calendar year, the Commission shall submit a report covering the preceding calendar year to the Speaker of the House of Representatives and the President pro tempore of the Senate for referral to the appropriate committees of the Congress. The report shall include—

"(1) the number of investigations conducted under section 7368 of this title and the results of such investigations;

"(2) the name and position or title of each individual involved, and the funds expended by the Commission, in carrying out the program required under subsection (a) of this section; and

"(3) an evaluation which describes—

"(A) the manner in which such program is being carried out; and

"(B) the effectiveness of such program in carrying out the purposes set forth in subsection (a) of this section.

"§ 7371. Regulations

"The Civil Service Commission shall prescribe such rules and regulations as may be necessary to carry out its responsibilities under this subchapter."

(b) (1) Sections 8332(k) (1), 8706(e), and 8906(e) (2) of title 5, United States Code, are each amended by inserting immediately after "who enters on" the following: "leave without pay granted under section 7325(e) of this title, or who enters on".

(2) Section 1308(a) of title 5, United States

Code, is amended—

(A) by inserting "and" at the end of paragraph (2);

(B) by striking out paragraph (3); and

(C) by redesignating paragraph (4) as paragraph (3).

(3) The second sentence of section 8332 (k)(1) of title 5, United States Code, is amended by striking out "second" and inserting "last" in lieu thereof.

(4) The section analysis of chapter 73 of title 5, United States Code, is amended to read as follows:

"SUBCHAPTER IV—POLITICAL ACTIVITIES

"Sec.

"7361. Political participation.

"7362. Definitions.

"7363. Use of Office authority or influence; prohibition.

"7364. Solicitation; prohibition.

"7365. Political activities on duty, etc.; prohibition.

"7366. Leave for candidates for elective office.

"7367. Board on Political Activities of Federal Employees.

"7368. Investigation; procedures; hearing.

"7369. Penalties.

"7370. Educational program; reports.

"7371. Regulations."

(c) Sections 602 and 607 of title 18, United States Code, relating to solicitations and making of political contributions, are each amended by adding at the end thereof the following new sentence: "This section does not apply to any activity of an employee, as defined in section 7362(1) of title 5, unless such activity is prohibited by section 7364 of that title."

(d) Section 6 of the Voting Rights Act of 1965 (42 U.S.C. 1973d) is amended by inserting immediately after "the provisions of section 9 of the Act of August 2, 1939, as amended (5 U.S.C. 118i), prohibiting partisan political activity" "and the provisions of subchapter IV of chapter 73 of title 5, United States Code, relating to political activities."

(e) Sections 103(a)(4)(D) and 203(a)(4)(D) of the District of Columbia Public Education Act are each amended by inserting "and section 7365" immediately after "sections 7324 through 7377".

(f) The amendments made by this section shall take effect on the ninetieth day after the date of the enactment of this Act.

Mr. DERWINSKI (during the reading). Mr. Speaker, I ask unanimous consent that the motion to recommit be considered as read and printed in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. DERWINSKI. Mr. Speaker, in view of the patience of the Members, I will be very brief.

All this motion to recommit does is retain the present provisions of the Hatch Act as they are set forth in title V, United States Code: in other words, those

provisions of the Hatch Act that have been in force for 36 years. It continues to apply those provisions to the employees of the executive branch.

Mr. Speaker, the motion to recommit amends title V to add a new subchapter 12 to chapter 73 of title V, which is the Clay bill, H.R. 8617, and applies that only to postal employees and congressional employees.

Mr. Speaker, the purpose of this motion to recommit is fairly obvious. The Postal Service is a quasi-independent unit of Government. As such, it is no longer a part of the Federal executive branch structure in the normal sense. Therefore, adjusting to the claims of the advocates of H.R. 8617 that their bill is needed, I extract the Postal Service employees from under the Hatch Act and apply provisions of the bill before us.

Congressional employees, our employees are not now covered by the Hatch Act. I would think, in fairness to the executive branch employees, we would want them to be covered, but I am applying to them the provisions of the Clay bill.

So what we have, in effect, is that the historic, time-tested, proven Hatch Act continues to apply to all Federal civilian employees except those in the Postal Service and those in the legislative branch.

Mr. Speaker, I think this is a workable, happy compromise, and in that spirit I urge adoption of the motion to recommit.

Mr. CLAY. Mr. Speaker, I rise in opposition to the motion. I think we have been through these arguments all day, and the same proposal the gentleman is now making was soundly defeated in the Committee of the Whole.

Mr. Speaker, I think it was defeated for several valid reasons. I do not think it makes any sense for us to talk in terms of bringing several hundred thousand postal employees and employees of Members of Congress under the prohibitions or under the provisions of this act and then denying the additional 2 million Federal employees what we consider the constitutional right of free speech and free assembly.

Mr. Speaker, I urge that the Members of this body reject the motion to recommit.

The SPEAKER. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER. The question is on the motion to recommit.

The question was taken; and the Speaker announced that the yeas appeared to have it.

Mr. DERWINSKI. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were refused.

Mr. DERWINSKI. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 81, nays 327, not voting 25, as follows:

[Roll No. 624]

YEAS—81

Abdnor	Goodling	Pettis
Anderson, Ill.	Gude	Poage
Archer	Guyer	Quie
Bauman	Hagedorn	Regula
Bell	Haley	Rhodes
Bennett	Hammer-	Runnels
Broomfield	schmidt	Ruppe
Brown, Ohio	Heckler, Mass.	Schneebeli
Burleson, Tex.	Hinshaw	Sebelius
Byron	Holt	Shriver
Clancy	Hutchinson	Shuster
Clausen,	Hyde	Skubitz
Don H.	Jarman	Smith, Nebr.
Cohen	Johnson, Pa.	Snyder
Collins, Tex.	Kasten	Steelman
Conable	Kindness	Steiger, Ariz.
Conlan	Lagamarsino	Steiger, Wis.
Crane	Latta	Sullivan
Derwinski	Lent	Talcott
Devine	McDonald	Taylor, Mo.
du Pont	McKinney	Thone
Erlenborn	Michel	Treen
Esch	Miller, Ohio	Vander Jagt
Eshleman	Moore	Waggonner
Finwick	Moorhead,	Wiggins
Findley	Calif.	Wilson, Tex.
Forsythe	Myers, Pa.	Wyder
Goldwater	O'Brien	Wylie

NAYS—327

Abzug	Andrews, N.C.	Aspin
Adams	Andrews,	AuCoin
Addabbo	N. Dak.	Badillo
Alexander	Annunzio	Bafalis
Ambro	Armstrong	Baldus
Anderson,	Ashbrook	Barrett
Calif.	Ashley	Baucus
Beard, R.I.	Harkin	Nolan
Beard, Tenn.	Harrington	Nowak
Bedell	Harris	Oberstar
Bergland	Harsha	Obey
Bevill	Hastings	O'Hara
Biaggi	Hawkins	Ottinger
Biester	Hayes, Ind.	Patten, N.J.
Bingham	Hays, Ohio	Patterson,
Blanchard	Hébert	Calif.
Blouin	Hechler, W. Va.	Pattison, N.Y.
Boland	Hefner	Pepper
Bolling	Heinz	Perkins
Bonker	Helstoski	Peyser
Bowen	Henderson	Pickle
Breaux	Hicks	Pike
Breckinridge	Hightower	Pressler
Brinkley	Hillis	Preyer
Brodhead	Holland	Price
Brooks	Holtzman	Pritchard
Brown, Calif.	Horton	Quillen
Brown, Mich.	Howard	Railsback
Broyhill	Howe	Randall
Buchanan	Hubbard	Rangel
Burgener	Hughes	Rees

Burke, Calif.	Hungate	Reuss
Burke, Fla.	Ichord	Richmond
Burke, Mass.	Jacobs	Riegle
Burlinson, Mo.	Jeffords	Rinaldo
Burton, John	Jenrette	Risenhoover
Burton, Phillip	Johnson, Calif.	Roberts
Butler	Johnson, Colo.	Robinson
Carney	Jones, Ala.	Rodino
Carr	Jones, N.C.	Roe
Carter	Jones, Tenn.	Rogers
Casey	Jordan	Roncalio
Cederberg	Karth	Rooney
Chappell	Kastenmeier	Rose
Chisholm	Kazen	Rosenthal
Clay	Kelly	Rostenkowski
Cleveland	Kemp	Roush
Cochran	Ketchum	Rousselot
Collins, Ill.	Keys	Roybal
Corman	Koch	Russo
Cornell	Krebs	Ryan
Cotter	Krueger	St Germain
Coughlin	LaFalce	Santini
D'Amours	Landrum	Sarasin
Daniel, Dan	Leggett	Sarbanes
Daniel, R. W.	Lehman	Satterfield
Daniels, N.J.	Levitas	Scheuer
Danielson	Litton	Schroeder
Davis	Lloyd, Calif.	Seiberling
de la Garza	Lloyd, Tenn.	Sharp
Delaney	Long, La.	Shipley
Dellums	Long, Md.	Simon
Dent	Lott	Slack
Derrick	Lujan	Smith, Iowa
Dickinson	McClory	Spellman
Diggs	McCloskey	Spence
Dingell	McCollister	Staggers
Dodd	McCormack	Stanton,
Downey, N.Y.	McDade	J. William
Downing, Va.	McEwen	Stanton,
Drinan	McFall	James V.
Duncan, Tenn.	McHugh	Stark
Early	McKay	Steed
Eckhardt	Macdonald	Stephens
Edgar	Madigan	Stokes
Edwards, Ala.	Maguire	Stratton
Edwards, Calif.	Mahon	Stuckey
Eilberg	Martin	Studds
Emery	Mathis	Symington
English	Matsunaga	Symms
Evans, Colo.	Mazzoli	Taylor, N.C.
Evans, Ind.	Meeds	Thompson
Fascell	Melcher	Thornton
Fish	Metcalfe	Traxler
Fisher	Meyner	Tsongas
Fithian	Mezvinsky	Ullman
Flood	Mikva	Van Deerlin
Florio	Miller, Calif.	Vander Veen
Flowers	Mills	Vigorito
Flynt	Mineta	Walsh
Foley	Minish	Wampler
Ford, Mich.	Mink	Waxman
Ford, Tenn.	Mitchell, Md.	Weaver
Fountain	Mitchell, N.Y.	Whalen
Frenzel	Moakley	White
Frey	Moffett	Whitehurst
Fuqua	Mollohan	Whitten
Gaydos	Montgomery	Wilson, Bob
Gaiardo	Morgan	Winn
Gibbons	Mosher	Wirth
Gilman	Moss	Wolf
Ginn	Mottl	Wright
Gonzalez	Murphy, Ill.	Yates
Gradison	Murphy, N.Y.	Yatron
Grassley	Murtha	Young, Alaska
Green	Myers, Ind.	Young, Fla.
Hall	Natcher	Young, Ga.
Hamilton	Neal	Young, Tex.
Hanley	Nedzi	Zablocki
Hannaford	Nichols	Zefiretti
Hansen	Nix	

NOT VOTING—25

Boggs	Jones, Okla.	Sikes
Brademas	Madden	Sisk
Clawson, Del	Mann	Solarz
Conte	Milford	Teague
Conyers	Moorhead, Pa.	Udall
Duncan, Oreg.	O'Neill	Vanik
Evins, Tenn.	Passman	Wilson, C. H.
Fary	Patman, Tex.	
Fraser	Schulze	

The Clerk announced the following pairs:

Mr. O'Neill with Mr. Fary.
 Mr. Patman with Mr. Milford.
 Mrs. Boggs with Mr. Moorhead of Pennsylvania.
 Mr. Passman with Mr. Madden.
 Mr. Teague with Mr. Duncan of Oregon.
 Mr. Brademas with Mr. Conyers.
 Mr. Evins of Tennessee with Mr. Fraser.
 Mr. Sikes with Mr. Jones of Oklahoma.
 Mr. Sisk with Mr. Schulze.
 Mr. Mann with Mr. Del Clawson.
 Mr. Solarz with Mr. Conte.
 Mr. Vanik with Mr. Charles H. Wilson of California.

Messrs. ROBINSON, HARSHA, ROSENKOWSKI, BROYHILL, EMERY, and HANSEN changed their vote from "yea" to "nay."

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

The SPEAKER. The question is on the passage of the bill.

Mr. DERWINSKI. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 288, nays 119, not voting 26, as follows:

[Roll No. 625]

YEAS—288

Abzug	Collins, Ill.	Hamilton
Adams	Corman	Hanley
Addabbo	Cornell	Hannaford
Alexander	Cotter	Harkin
Ambro	Coughlin	Harrington
Anderson,	D'Amours	Harris
Calif.	Daniels, N.J.	Hawkins
Andrews, N.C.	Danielson	Hayes, Ind.
Andrews,	Davis	Hays, Ohio
N. Dak.	de la Garza	Hébert
Annuozio	Delaney	Hechler, W. Va.
Ashley	Dellums	Hefner
Aspin	Dent	Heinz
Bafalis	Derrick	Helstoski
Baldus	Diggs	Hicks
Barrett	Dingell	Hightower
Baucus	Dodd	Hillis
Beard, R.I.	Downey, N.Y.	Hinshaw
Bedell	Downing, Va.	Holland
Bergland	Drinan	Horton
Bevill	Early	Howard
Biaggi	Eckhardt	Howe
Biester	Edgar	Hubbard
Bingham	Edwards, Ala.	Hughes
Blanchard	Edwards, Calif.	Hungate
Blouin	Eilberg	Ichord
Boland	Emery	Jacobs
Bolling	English	Jeffords
Bonker	Evans, Colo.	Jenrette
Bowen	Evans, Ind.	Johnson, Calif.

Breaux	Fascell	Johnson, Colo.
Brinkley	Fish	Jones, Ala.
Brodhead	Fithian	Jones, N.C.
Brooks	Flood	Jones, Tenn.
Brown, Calif.	Florio	Jordan
Buchanan	Flowers	Karth
Burgener	Foley	Kastenmeier
Burke, Calif.	Ford, Mich.	Kazen
Burke, Fla.	Ford, Tenn.	Ketchum
Burke, Mass.	Forsythe	Keys
Burton, John	Fountain	Koch
Burton, Phillip	Frenzel	Krebs
Carney	Frey	Krueger
Carr	Gaydos	LaFalce
Chappell	Gaiamo	Leggett
Chisholm	Gibbons	Lehman
Clancy	Gilman	Lent
Clay	Ginn	Levitas
Cleveland	Green	Litton
Cochran	Hall	Lloyd, Calif.

Lloyd, Tenn.	Nolan	Seiberling
Long, La.	Nowak	Sharp
Long, Md.	Oberstar	Shipley
Lott	Obey	Simon
Lujan	O'Brien	Slack
McClory	O'Hara	Smith, Iowa
McCollister	Ottinger	Snyder
McCormack	Patten, N.J.	Spellman
McDade	Patterson,	Staggers
McEwen	Calif.	Stanton,
McFall	Pattison, N.Y.	James V.
McHugh	Pepper	Stark
McKay	Perkins	Steed
McKinney	Peyser	Stephens
Macdonald	Pike	Stokes
Madigan	Preyer	Stratton
Maguire	Price	Stuckey
Mathis	Pritchard	Studds
Matsunaga	Quillen	Symington
Mazzoli	Railsback	Taylor, N.C.
Meeds	Randall	Thompson
Melcher	Rangel	Thornton
Metcalfe	Rees	Traxler
Meyner	Reuss	Tsongas
Mezvinsky	Richmond	Ullman
Mikva	Riegle	Van Deerlin
Miller, Calif.	Rinaldo	Vander Veen
Mills	Risenhoover	Vigorito
Mineta	Rodino	Walsh
Minish	Roe	Wampler
Mink	Rogers	Waxman
Mitchell, Md.	Roncalio	Weaver
Mitchell, N.Y.	Rooney	Whalen
Moakley	Rose	White
Moffett	Rosenthal	Wilson, Tex.
Mollohan	Rostenkowski	Winn
Morgan	Roush	Wirth
Moss	Rousselot	Wolf
Mottl	Roybal	Wright
Murphy, Ill.	Runnels	Yates
Murphy, N.Y.	Russo	Yatron
Murtha	Ryan	Young, Alaska
Myers, Ind.	St Germain	Young, Ga.
Natcher	Santini	Young, Tex.
Neal	Sarasin	Zablocki
Nedzi	Sarbanes	Zeferetti
Nichols	Scheuer	
Nix	Schroeder	

NAYS—119

Abdnor	Flynt	Myers, Pa.
Anderson, Ill.	Fuqua	Pettis
Archer	Goldwater	Pickle
Armstrong	Gonzalez	Poage
Ashbrook	Goodling	Pressler
AuCoin	Gradison	Quie
Bauman	Grassley	Regula
Beard, Tenn.	Gude	Rhodes
Bell	Guyer	Roberts
Bennett	Hagedorn	Robinson
Breckinridge	Haley	Ruppe
Broomfield	Hammer-	Satterfield
Brown, Mich.	schmidt	Schneebeli
Brown, Ohio	Hansen	Sebelius

Broyhill	Harsha	Shriver
Burleson, Tex.	Hastings	Shuster
Burlison, Mo.	Heckler, Mass.	Skubitz
Butler	Henderson	Smith, Nebr.
Byron	Holt	Spence
Carter	Holtzman	Stanton,
Casey	Hutchinson	J. William
Cederberg	Hyde	Steelman
Clausen,	Jarman	Steiger, Ariz.
Don H.	Johnson, Pa.	Sullivan
Cohen	Kasten	Symms
Collins, Tex.	Kelly	Talcott
Conable	Kemp	Taylor, Mo.
Conlan	Kindness	Thone
Crane	Lagomarsino	Treen
Daniel, Dan	Landrum	Vander Jagt
Daniel, R. W.	Latta	Waggonner
Derwinski	McCloskey	Whitehurst
Devine	McDonald	Whitten
Dickinson	Mahon	Wiggins
Duncan, Tenn.	Martin	Wilson, Bob
du Pont	Michel	Wydler
Erlenborn	Miller, Ohio	Wylie
Esch	Montgomery	Young, Fla.
Eshleman	Moore	
Fenwick	Moorhead,	
Findley	Calif.	
Fisher	Mosher	

NOT VOTING—26

Badillo	Fraser	Schulze
Boggs	Jones, Okla.	Sikes
Brademas	Madden	Sisk
Clawson, Del	Mann	Solarz
Conte	Milford	Teague
Conyers	Moorhead, Pa.	Udall
Duncan, Oreg.	O'Neill	Vanik
Evins, Tenn.	Passman	Wilson, C. H.
Fary	Patman, Tex.	

The Clerk announced the following pairs:

On this vote:

Mr. O'Neill for, with Mr. Passman against.
Mr. Conte for, with Mr. Schulze against.

Until further notice:

Mrs. Boggs with Mr. Vanik.
Mr. Teague with Mr. Duncan of Oregon.
Mr. Sikes with Mr. Evins of Tennessee.
Mr. Sisk with Mr. Fary.
Mr. Moorhead of Pennsylvania with Mr. Conyers.

Mr. Brademas with Mr. Fraser.
Mr. Badillo with Mr. Jones of Oklahoma.
Mr. Mann with Mr. Madden.
Mr. Charles H. Wilson of California with Mr. Milford.
Mr. Patman with Mr. Solarz.
Mr. Udall with Mr. Del Clawson.

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERMISSION FOR CLERK TO MAKE CHANGES IN SECTION NUMBERS, CROSS REFERENCES, AND TECHNICAL CORRECTIONS IN ENGROSSMENT OF H.R. 8617

Mr. CLAY. Mr. Speaker, I ask unanimous consent that the Clerk, in the engrossment of the bill H.R. 8617, be authorized and directed to make such changes in section numbers, cross references, and other technical and conforming corrections as may be required to reflect the actions of the House.

The SPEAKER. Is there objection to the request of the gentleman from Missouri?

There was no objection.

GENERAL LEAVE

Mr. CLAY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and include extraneous matter, on the bill, H.R. 8617, just passed.

The SPEAKER. Is there objection to the request of the gentleman from Missouri?

There was no objection.

H.R. 8617, THE FEDERAL EMPLOYEES' POLITICAL ACTIVITIES ACT OF 1975,
WITH AMENDMENTS, AS PASSED BY THE HOUSE OF REPRESENTATIVES ON
OCTOBER 21, 1975

MAJOR PROVISIONS

- *States that federal employees are encouraged to exercise their right of voluntary political participation.
- *Prohibits the use of official authority, influence, or coercion with the right to vote, not to vote or to otherwise engage in political activity.
- *Prohibits use of funds to influence votes; solicitation of political contributions by superior officials; and making political contributions in government rooms or buildings.
- *Prohibits political activity while on duty, in federal buildings, or in uniform.
- *Prohibits the extortion of money for political purposes from federal employees.
- *Provides leave for candidates for elective office. Employees who seek full time elective office must take leave 90 days prior to election.
- *Authorizes the Civil Service Commission to investigate alleged violations of law. Limits investigation of prohibited activities to 90 days.
- *Subjects violators of law to removal, suspension, or lesser penalties at the discretion of the Board.
- *Establishes an independent Board whose function is to adjudicate alleged violations of law and provide judicial review of adverse decisions.
- *Requires that the Civil Service Commission conduct a program for informing federal employees of their rights of political participation and report annually to the Congress on its implementation.

94TH CONGRESS
1ST SESSION

H. R. 8617

IN THE SENATE OF THE UNITED STATES

OCTOBER 22, 1975

Read twice and referred to the Committee on Post Office and Civil Service

AN ACT

To restore to Federal civilian and Postal Service employees their rights to participate voluntarily, as private citizens, in the political processes of the Nation, to protect such employees from improper political solicitations, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Federal Employees'
4 Political Activities Act of 1975".

5 SEC. 2. (a) Subchapter III of chapter 73 of title 5,
6 United States Code, is amended to read as follows:

7 "SUBCHAPTER III—POLITICAL ACTIVITIES
8 "§ 7321. Political participation

9 "It is the policy of the Congress that employees should
10 be encouraged to fully exercise, to the extent not expressly

1 prohibited by law, their rights of voluntary participation in
2 the political processes of our Nation.

3 **“§ 7322. Definitions**

4 “For the purpose of this subchapter—

5 “(1) ‘employee’ means any individual, including
6 the President and the Vice President, employed or
7 holding office in—

8 “(A) an Executive agency,

9 “(B) the government of the District of
10 Columbia,

11 “(C) the competitive service, or

12 “(D) the United States Postal Service or the
13 Postal Rate Commission;

14 but does not include a member of the uniformed services;

15 “(2) ‘candidate’ means any individual who seeks
16 nomination for election, or election, to any elective office,
17 whether or not such individual is elected, and, for the
18 purpose of this paragraph, an individual shall be deemed
19 to seek nomination for election, or election, to an elective
20 office, if such individual has—

21 “(A) taken the action required to qualify for
22 nomination for election, or election, or

23 “(B) received political contributions or made
24 expenditures, or has given consent for any other
25 person to receive political contributions or make ex-

1 penditures, with a view to bringing about such indi-
2 vidual's nomination for election, or election, to such
3 office;

4 “(3) ‘political contribution’—

5 “(A) means a gift, subscription, loan, advance,
6 or deposit of money or anything of value, made for
7 the purpose of influencing the nomination for elec-
8 tion, or election, of any individual to elective office
9 or for the purpose of otherwise influencing the re-
10 sults of any election;

11 “(B) includes a contract, promise, or agree-
12 ment, express or implied, whether or not legally
13 enforceable, to make a political contribution for any
14 such purpose; and

15 “(C) includes the payment by any person,
16 other than a candidate or a political organization
17 of compensation for the personal services of another
18 person which are rendered to such candidate or po-
19 litical organization without charge for any such
20 purpose;

21 “(4) ‘superior’ means an employee (other than the
22 President or the Vice President) who exercises super-
23 vision of, or control or administrative direction over,
24 another employee;

25 “(5) ‘elective office’ means any elective public of-

1 fice and any elective office of any political party or
2 affiliated organization; and

3 “(6) ‘Board’ means the Board on Political Activi-
4 ties of Federal Employees established under section 7327
5 of this title.

6 **“§ 7323. Use of official authority or influence; prohibition**

7 “(a) An employee may not directly or indirectly use
8 or attempt to use the official authority or influence of such
9 employee for the purpose of—

10 “(1) interfering with or affecting the result of any
11 election; or

12 “(2) intimidating, threatening, coercing, command-
13 ing, influencing, or attempting to intimidate, threaten,
14 coerce, command, or influence—

15 “(A) any individual for the purpose of inter-
16 fering with the right of any individual to vote as
17 such individual may choose, or of causing any indi-
18 vidual to vote, or not to vote, for any candidate or
19 measure in any election;

20 “(B) any person to give or withhold any politi-
21 cal contribution; or

22 “(C) any person to engage, or not to engage,
23 in any form of political activity whether or not such
24 activity is prohibited by law.

25 “(b) For the purpose of subsection (a) of this section,

1 'use of official authority or influence' includes, but is not
 2 limited to, promising to confer or conferring any benefit
 3 (such as appointment, promotion, compensation, grant,
 4 contract, license, or ruling), or effecting or threatening to
 5 effect any reprisal (such as deprivation of appointment, pro-
 6 motion, compensation, grant, contract, license, or ruling).

7 **"§ 7324. Solicitation; prohibition**

8 "An employee may not—

9 " (1) give or offer to give a political contribution
 10 to any individual either to vote or refrain from voting,
 11 or to vote for or against any candidate or measure, in
 12 any election;

13 " (2) solicit, accept, or receive a political contribu-
 14 tion to vote or refrain from voting, or to vote for or
 15 against any candidate or measure, in any election;

16 " (3) knowingly give or hand over a political con-
 17 tribution to a superior of such employee; or

18 " (4) knowingly solicit, accept, or receive, or be in
 19 any manner concerned with soliciting, accepting, or
 20 receiving, a political contribution—

21 " (A) from another employee (or a member
 22 of another employee's immediate family) with re-
 23 spect to whom such employee is a superior; or

24 " (B) in any room or building occupied in the
 25 discharge of official duties by—

1 “(i) an individual employed or holding
2 office in the Government of the United States, in
3 the government of the District of Columbia,
4 or in any agency or instrumentality of the
5 foregoing; or

6 “(ii) an individual receiving any salary or
7 compensation for services from money derived
8 from the Treasury of the United States.

9 **“§ 7325. Political activities on duty, etc.; prohibition**

10 “(a) An employee may not engage in political ac-
11 tivity—

12 “(1) while such employee is on duty,

13 “(2) in any room or building occupied in the dis-
14 charge of official duties by an individual employed or
15 holding office in the Government of the United States,
16 in the government of the District of Columbia, or in
17 any agency or instrumentality of the foregoing, or

18 “(3) while wearing a uniform or official insignia
19 identifying the office or position of such employee.

20 “(b) The provisions of subsection (a) of this section
21 shall not apply to—

22 “(1) the President and the Vice President;

23 “(2) an individual—

24 “(A) paid from the appropriation for the White
25 House Office,

1 “(B) paid from funds to enable the Vice Presi-
2 dent to provide assistance to the President, or

3 “(C) on special assignment to the White House
4 Office,

5 unless such individual holds a career or career-condi-
6 tional appointment in the competitive service; or

7 “(3) the Mayor of the District of Columbia, the
8 Chairman or a member of the Council of the District of
9 Columbia, as established by the District of Columbia
10 Self-Government and Governmental Reorganization Act.

11 **“§ 7326. Leave for candidates for elective office**

12 “(a) (1) An employee who is a candidate for elective
13 office shall, upon the request of such employee, be granted
14 leave without pay for the purpose of allowing such employee
15 to engage in activities relating to such candidacy.

16 “(2) Any employee who is a candidate for elective
17 office shall be placed on leave without pay effective begin-
18 ning on whichever of the following dates is the later:

19 “(A) the 90th day before any election (including
20 a primary election, other than a primary election in
21 which such employee is not a candidate) for that elec-
22 tive office, or

23 “(B) the day following the date on which the
24 employee became a candidate for elective office.

25 Such leave shall terminate on the day following the election

1 or the day following the date on which the employee is no
2 longer a candidate for elective office, whichever first occurs.
3 The preceding sentence shall not apply to the extent an em-
4 ployee is otherwise on leave. The Civil Service Commission
5 shall, upon application, exempt from the application of this
6 paragraph any employee who is a candidate for any part-
7 time elective office.

8 “(b) Notwithstanding section 6302 (d) of this title,
9 an employee who is a candidate for elective office shall, upon
10 the request of such employee, be granted accrued annual
11 leave for the purpose of allowing such employee to engage
12 in activities relating to such candidacy. Such leave shall be
13 in addition to leave without pay of such employee under sub-
14 section (a) of this section.

15 “(c) An employee shall promptly notify the agency in
16 which he is employed upon becoming a candidate for elective
17 office and upon the termination of such candidacy.

18 “(d) The foregoing provisions of this section shall not
19 apply in the case of an individual who is an employee by
20 reason of holding an elective public office.

21 **“§ 7327. Board on Political Activities of Federal Employees**

22 “(a) There is established a board to be known as the
23 Board on Political Activities of Federal Employees. It shall
24 be the function of the Board to hear and decide cases regard-
25 ing violations of sections 7323, 7324, and 7325 of this title.

1 “(b) The Board shall be composed of 3 members,
2 appointed by the President, by and with the advice and
3 consent of the Senate. One member shall be designated by
4 the President as Chairman of the Board.

5 “(c) Members of the Board shall be chosen on the basis
6 of their professional qualifications from among individuals
7 who, at the time of their appointment, are employees (as
8 defined under section 7322 (1) of this title), except that
9 not more than 2 individuals of the same political party may
10 be appointed as members. Employees of the Civil Service
11 Commission shall be ineligible to be appointed to or to hold
12 office as members of the Board.

13 “(d) (1) Members of the Board shall serve a term of 3
14 years, except that of the members first appointed—

15 “(A) the Chairman shall be appointed for a term of
16 3 years,

17 “(B) one member, designated by the President,
18 shall be appointed for a term of 2 years, and

19 “(C) one member, designated by the President,
20 shall be appointed for a term of 1 year.”

21 An individual appointed to fill a vacancy occurring other
22 than by the expiration of a term of office shall be appointed
23 only for the unexpired term of the member such individual
24 will succeed. Any vacancy occurring in the membership of

1 the Board shall be filled in the same manner as in the case
2 of the original appointment.

3 “(2) If an employee who was appointed as a member
4 of the Board is separated from service as an employee he
5 may not continue as a member of the Board after the 60-
6 day period beginning on the date so separated.

7 “(e) The Board shall meet at the call of the Chairman.

8 “(f) All decisions of the Board with respect to the
9 exercise of its duties and powers under the provisions of this
10 subchapter shall be made by a majority vote of the Board.

11 “(g) A member of the Board may not delegate to any
12 person his vote nor, except as expressly provided by this
13 subchapter, may any decisionmaking authority vested in the
14 Board by the provisions of this subchapter be delegated to
15 any member or person.

16 “(h) The Board shall prepare and publish in the Fed-
17 eral Register written rules for the conduct of its activities,
18 shall have an official seal which shall be judicially noticed,
19 and shall have its office in or near the District of Columbia
20 (but it may meet or exercise any of its powers anywhere
21 in the United States).

22 “(i) The Civil Service Commission shall provide such
23 clerical and professional personnel, and administrative sup-
24 port, as the Chairman of the Board considers appropriate
25 and necessary to carry out the Board's functions under this

1 subchapter. Such personnel shall be responsible to the Chair-
2 man of the Board.

3 “(j) The Administrator of the General Services Ad-
4 ministration shall furnish the Board suitable office space ap-
5 propriately furnished and equipped, as determined by the
6 Administrator.

7 “(k) (1) Members of the Board shall receive no addi-
8 tional pay on account of their service on the Board.

9 “(2) Members shall be entitled to leave without loss of
10 or reduction in pay, leave, or performance or efficiency rat-
11 ing during a period of absence while in the actual perform-
12 ance of duties vested in the Board.

13 **“§ 7328. Investigation; procedures; hearing**

14 “(a) The Civil Service Commission shall investigate
15 reports and allegations of any activity prohibited by section
16 7323, 7324, or 7325 of this title. Any such investigation
17 shall terminate not later than 90 days after the date of its
18 commencement, except that such 90-day limitation may be
19 extended upon the written approval of the Board for the
20 period specified in such approval. If the Commission does
21 not make the notification required under subsection (c) of
22 this section before the close of the period for investigation,
23 subsections (c) (2) and (3) and (d) of this section, and
24 section 7329 of this title, shall not apply thereafter to the

1 employee involved with respect to the activities under
2 investigation.

3 “(b) As a part of the investigation of the activities of an
4 employee, the Commission shall provide such employee an
5 opportunity to make a statement concerning the matters
6 under investigation and to support such statement with any
7 documents the employee wishes to submit. An employee of
8 the Commission lawfully assigned to investigate a violation
9 of this subchapter may administer an oath to a witness
10 attending to testify or depose in the course of the investi-
11 gation.

12 “(c) (1) If it appears to the Commission after investi-
13 gation that a violation of section 7323, 7324, or 7325 of
14 this title has not occurred, it shall so notify the employee and
15 the agency in which the employee is employed.

16 “(2) Except as provided in paragraph (3) of this sub-
17 section, if it appears to the Commission after investigation
18 that a violation of section 7323, 7324, or 7325 of this title
19 has occurred, the Commission shall submit to the Board and
20 serve upon the employee a notice by certified mail, return
21 receipt requested (or if notice cannot be served in such man-
22 ner, then by any method calculated to reasonably apprise the
23 employee) —

24 “(A) setting forth specifically and in detail the
25 charges of alleged prohibited activity;

1 “(B) advising the employee of the penalties pro-
2 vided under section 7329 of this title;

3 “(C) specifying a period of not less than 30 days
4 within which the employee may file with the Board a
5 written answer to the charges in the manner prescribed
6 by rules issued by the Board; and

7 “(D) advising the employee that unless the em-
8 ployee answers the charges, in writing, within the time
9 allowed therefor, the Board is authorized to treat such
10 failure as an admission by the employee of the charges
11 set forth in the notice and a waiver by the employee of
12 the right to a hearing on the charges.

13 “(3) If it appears to the Commission after investigation
14 that a violation of section 7323, 7324, or 7325 of this title
15 has been committed by—

16 “(A) the Vice President;

17 “(B) an employee appointed by the President by
18 and with the advice and consent of the Senate;

19 “(C) an employee whose appointment is expressly
20 required by statute to be made by the President;

21 “(D) the Mayor of the District of Columbia; or

22 “(E) the Chairman or a member of the Council of
23 the District of Columbia, as established by the District
24 of Columbia Self-Government and Governmental Reor-
25 ganization Act;

1 the Commission shall refer the case to the Attorney General
2 for prosecution under title 18, and shall report the nature and
3 details of the violation to the President and to the Con-
4 gress.

5 (d) (1) If a written answer is not duly filed within
6 the time allowed therefor, the Board may, without further
7 proceedings, issue its final decision and order.

8 (2) If an answer is duly filed, the charges shall be
9 determined by the Board on the record after a hearing con-
10 ducted by a hearing examiner appointed under section 3105
11 of this title, and, except as otherwise expressly provided
12 under this subchapter, in accordance with the require-
13 ments of subchapter II of chapter 5 of this title, notwith-
14 standing any exception therein for matters involving the
15 tenure of an employee. The hearing shall be commenced
16 within 30 days after the answer is filed with the Board
17 and shall be conducted without unreasonable delay. As soon
18 as practicable after the conclusion of the hearing, the exam-
19 iner shall serve upon the Board, the Commission, and the
20 employee such examiner's recommended decision with notice
21 to the Commission and the employee of opportunity to file
22 with the Board, within 30 days after the date of such notice,
23 exceptions to the recommended decision. The Board shall
24 issue its final decision and order in the proceeding no later
25 than 60 days after the date the recommended decision is

1 served. The employee shall not be removed from active duty
2 status by reason of the alleged violation of this subchapter
3 at any time before the effective date specified by the Board.

4 “(e) (1). At any stage of a proceeding or investigation
5 under this subchapter, the Board may, at the written request
6 of the Commission or the employee, require by subpoena the
7 attendance and testimony of witnesses and the production
8 of documentary or other evidence relating to the proceeding
9 or investigation at any designated place, from any place in
10 the United States or any territory or possession thereof, the
11 Commonwealth of Puerto Rico, or the District of Columbia.
12 Any member of the Board may issue subpoenas and members
13 of the Board and any hearing examiner authorized by the
14 Board may administer oaths, examine witnesses, and receive
15 evidence. In the case of contumacy or failure to obey a sub-
16 poena, the United States district court for the judicial district
17 in which the person to whom the subpoena is addressed
18 resides or is served may, upon application by the Board,
19 issue an order requiring such person to appear at any desig-
20 nated place to testify or to produce documentary or other
21 evidence. Any failure to obey the order of the court may be
22 punished by the court as a contempt thereof.

23 “(2) The Board (or a member designated by the
24 Board) may order the taking of depositions at any stage of
25 a proceeding or investigation under this subchapter. Deposi-

1 tions shall be taken before an individual designated by the
2 Board and having the power to administer oaths. Testimony
3 shall be reduced to writing by or under the direction of the
4 individual taking the deposition and shall be subscribed by
5 the deponent.

6 “(3) (A) After requesting in writing and obtaining
7 the approval of the Attorney General, the Board may de-
8 termine that an employee's attendance and testimony are
9 necessary to the carrying out of the Board's functions under
10 this subchapter. For purposes of the preceding sentence, if
11 the Attorney General does not notify the Board in writing
12 within 30 days after the date on which a request for such
13 approval is made that the Board does not have his approval,
14 then such approval is deemed to have been given. Such
15 30-day period shall be extended an additional 10 days if
16 the Attorney General submits in writing to the Board the
17 reason for such extension.

18 “(B) If the Board makes a determination under sub-
19 paragraph (A) with respect to any employee, such em-
20 ployee may not be excused from attending and testifying
21 or from producing documentary or other evidence in obedi-
22 ence to a subpoena of the Board on the ground that the testi-
23 mony or evidence required of the employee may tend to in-
24 criminate the employee or subject the employee to a penalty
25 or forfeiture for or on account of any transaction, matter, or

1 thing concerning which the employee is compelled to tes-
2 tify or produce evidence. No employee shall be prosecuted
3 or subjected to any penalty or forfeiture for or on account
4 of any transaction, matter, or thing concerning which the
5 employee is compelled under this paragraph, after having
6 claimed the privilege against self-incrimination, to testify
7 or produce evidence, nor shall testimony or evidence so com-
8 pelled be used as evidence in any criminal proceeding against
9 the employee in any court, except that no employee shall
10 be exempt from prosecution and punishment for perjury
11 committed in so testifying.

12 “(f) An employee upon whom a penalty is imposed by
13 an order of the Board under subsection (d) of this section
14 may, within 30 days after the date on which the order was
15 issued, institute an action for judicial review of the Board’s
16 order in the United States District Court for the District of
17 Columbia or in the United States district court for the judicial
18 district in which the employee resides or is employed. The
19 institution of an action for judicial review shall not operate
20 as a stay of the Board’s order, unless the court specifically
21 orders such stay. A copy of the summons and complaint
22 shall be served as otherwise prescribed by law and, in
23 addition, upon the Board. Thereupon the Board shall certify
24 and file with the court the record upon which the Board’s
25 order was based. If application is made to the court for

1 leave to adduce additional evidence, and it is shown to the
2 satisfaction of the court that the additional evidence may
3 materially affect the result of the proceeding and that there
4 were reasonable grounds for failure to adduce the evidence
5 at the hearing conducted under subsection (d) (2) of this
6 section, the court may direct that the additional evidence be
7 taken before the Board in the manner and on the terms and
8 conditions fixed by the court. The Board may modify its
9 findings of fact or order, in the light of the additional evi-
10 dence, and shall file with the court such modified findings or
11 order. The Board's findings of fact, if supported by substan-
12 tial evidence, shall be conclusive. The court shall affirm the
13 Board's order if it determines that it is in accordance with
14 law. If the court determines that the order is not in
15 accordance with law—

16 “(1) it shall remand the proceeding to the Board
17 with directions either to enter an order determined by
18 the court to be lawful or to take such further proceedings
19 as, in the opinion of the court, are required; and

20 “(2) it may assess against the United States rea-
21 sonable attorney fees and other litigation costs reason-
22 ably incurred by the employee.

23 “(g) The Commission or the Board, in its discretion,
24 may proceed with any investigation or proceeding instituted
25 under this subchapter notwithstanding that the Commission

1 or the head of an employing agency or department has
2 reported the alleged violation to the Attorney General as
3 required by section 535 of title 28.

4 **“§ 7329. Penalties**

5 “(a) Subject to and in accordance with section 7328
6 of this title, an employee who is found to have violated
7 any provision of section 7323, 7324, or 7325 of this title
8 shall, upon a final order of the Board, be—

9 “(1) removed from such employee’s position, in
10 which event that employee may not thereafter hold any
11 position (other than an elected position) as an em-
12 ployee (as defined in section 7322 (1) of this title) for
13 such period as the Board may prescribe;

14 “(2) suspended without pay from such employee’s
15 position for such period as the Board may prescribe; or

16 “(3) disciplined in such other manner as the Board
17 shall deem appropriate.

18 “(b) The Board shall notify the Commission, the em-
19 ployee, and the employing agency of any penalty it has
20 imposed under this section. The employing agency shall
21 certify to the Board the measures undertaken to implement
22 the penalty.

23 **“§ 7330. Educational program; reports**

24 “(a) The Commission shall establish and conduct a
25 continuing program to inform all employees of their rights

1 of political participation and to educate employees with
 2 respect to those political activities which are prohibited.
 3 The Commission shall inform each employee individually
 4 in writing, at least once each calendar year, of such em-
 5 ployee's political rights and of the restrictions under this
 6 subchapter. The Commission may determine, for each State,
 7 the most appropriate date for providing information required
 8 by this subsection. Such information, however, shall be pro-
 9 vided to employees employed or holding office in any State
 10 not later than 60 days before the earliest primary or gen-
 11 eral election for State or Federal elective office held in such
 12 State.

13 “(b) On or before March 30 of each calendar year, the
 14 Commission shall submit a report covering the preceding
 15 calendar year to the Speaker of the House of Representa-
 16 tives and the President pro tempore of the Senate for referral
 17 to the appropriate committees of the Congress. The report
 18 shall include—

19 “(1) the number of investigations conducted under
 20 section 7328 of this title and the results of such investi-
 21 gations;

22 “(2) the name and position or title of each individ-
 23 ual involved, and the funds expended by the Commis-
 24 sion, in carrying out the program required under subsec-
 25 tion (a) of this section; and

“(3) an evaluation which describes—

“(A) the manner in which such program is being carried out; and

“(B) the effectiveness of such program in carrying out the purposes set forth in subsection (a) of this section.

“§ 7331. Regulations

“The Civil Service Commission shall prescribe such rules and regulations as may be necessary to carry out its responsibilities under this subchapter. However, no regulation or rule of the Commission or any amendment thereto shall take effect unless—

“(1) the Commission transmits such rule, regulation, or amendments to the Congress; and

“(2) neither House of Congress has disapproved such rule, regulation, or amendment within 30 legislative days from the date of transmittal to the Congress.”.

(b) (1) Sections 8332 (k) (1), 8706 (e), and 8906 (e) (2) of title 5, United States Code, are each amended by inserting immediately after “who enters on” the following: “leave without pay granted under section 7326 (a) of this title, or who enters on”.

(2) Section 3302 of title 5, United States Code, is amended by striking out “7153, 7321, and 7322” and inserting in lieu thereof “and 7153”.

1 (3) Section 1308 (a) of title 5, United States Code,
2 is amended—

3 (A) by inserting “and” at the end of paragraph
4 (2) ;

5 (B) by striking out paragraph (3) ; and

6 (C) by redesignating paragraph (4) as paragraph
7 (3) .

8 (4) The second sentence of section 8332 (k) (1) of title
9 5, United States Code, is amended by striking out “second”
10 and inserting “last” in lieu thereof.

11 (5) The section analysis for subchapter III of chapter
12 73 of title 5, United States Code, is amended to read as
13 follows:

“SUBCHAPTER III—POLITICAL ACTIVITIES

“Sec.

“7321. Political participation.

“7322. Definitions.

“7323. Use of official authority or influence; prohibition.

“7324. Solicitation; prohibition.

“7325. Political activities on duty, etc.; prohibition.

“7326. Leave for candidates for elective office.

“7327. Board on Political Activities of Federal Employees.

“7328. Investigation; procedures; hearing.

“7329. Penalties.

“7330. Educational program; reports.

“7331. Regulations.”.

14 (c) (1) Sections 602 and 607 of title 18, United States
15 Code, relating to solicitations and making of political con-
16 tributions, are each amended by adding at the end thereof
17 the following new sentence: “This section does not apply to
18 any activity of an employee, as defined in section 7322 (1)

1 of title 5, unless such activity is prohibited by section 7324
 2 of that title.”.

3 (2) Chapter 29 of title 18 of the United States Code is
 4 amended—

5 (A) by adding at the end the following new
 6 section:

7 **“§ 614. Extortion of political contributions from Federal**
 8 **personnel**

9 “Whoever, by the commission of or threat of physical
 10 violence to, or economic sanction against, any person, ob-
 11 tains, or endeavors to obtain, from an officer or employee of
 12 the United States or of any department or agency thereof, or
 13 from a person receiving any salary or compensation for serv-
 14 ices from money derived from the Treasury of the United
 15 States, any contribution for the promotion of a political ob-
 16 ject, shall be imprisoned not less than two nor more than
 17 three years, or fined not more than \$5,000, or both.”; and

18 (B) by adding at the end of the table of sections
 19 for such chapter the following new item:

“614. Extortion of political contributions from Federal personnel.”

20 (d) Section 6 of the Voting Rights Act of 1965 (42
 21 U.S.C. 1973d) is amended by striking out “the provisions
 22 of section 9 of the Act of August 2, 1939, as amended (5
 23 U.S.C. 118i), prohibiting partisan political activity” and by
 24 inserting in lieu thereof “the provisions of subchapter III

1 of chapter 73 of title 5, United States Code, relating to
2 political activities”.

3 (e) Sections 103 (a) (4) (D) and 203 (a) (4) (D) of
4 the District of Columbia Public Education Act are each
5 amended by striking out “sections 7324 through 7327 of
6 title 5” and inserting in lieu thereof “section 7325 of title 5”.

7 (f) The amendments made by this section shall take
8 effect on the ninetieth day after the date of the enactment
9 of this Act, except that the provisions of section 7326 (a)
10 (2) of title 5, United States Code, as amended by this Act,
11 shall take effect on the one hundred and twentieth day after
12 such date.

13 (g) Not later than sixty days after the date of the enact-
14 ment of this Act, the Civil Service Commission shall—

15 (1) establish standards and criteria by which deter-
16 minations shall be made as to which elective offices will
17 be considered part-time elective offices for purposes of
18 administering section 7326 (a) (2) of such title 5, and

19 (2) prepare and transmit a report to the Congress
20 containing such standards and criteria.

Passed the House of Representatives October 21, 1975.

Attest:

W. PAT JENNINGS,

Clerk.

Calendar No. 496

94TH CONGRESS }
1st Session }

SENATE

{ REPORT
{ No. 94-512FEDERAL EMPLOYEES' POLITICAL ACTIVITIES ACT
OF 1975

DECEMBER 5 (legislative day, DECEMBER 2), 1975.—Ordered to be printed

Mr. McGEE, from the Committee on Post Office and Civil Service,
submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany H.R. 8617]

The Committee on Post Office and Civil Service, to which was referred the bill (H.R. 8617) to restore to Federal civilian and Postal Service employees their rights to participate voluntarily, as private citizens, in the political processes of the Nation, to protect such employees from improper political solicitations, and for other purposes having considered the same, reports favorably thereon with amendments and recommends that the bill (as amended) do pass.

AMENDMENTS

The amendments are as follows:

Page 6, line 9, strike out “, etc.”.

Page 8, beginning on line 2, strike out the period and all that follows before the period on line 4, and insert in lieu thereof the following:

”, unless the employee is otherwise on leave”.

Page 8, line 18, strike out “foregoing”.

Page 9, line 20, strike out the quotation marks.

Page 14, line 5, strike out “duly”.

Page 14, line 8, strike out “duly filed” and insert in lieu thereof “filed within the time allowed”.

Page 17, line 23, strike out “Board. Thereupon the Board shall certify” and insert in lieu thereof “Board which shall then certify”.

Page 22, between lines 13 and 14, in the item relating to section 7325, strike out “, etc.”.

Page 12, lines 20 and 21, strike out “a notice by certified mail, return receipt requested” and insert in lieu thereof “a written notice by certified mail”.

Page 4, between lines 24 and 25, insert the following new subsection

“(b) Nothing in this section authorizes the use by any employee of any information coming to him in the course of his employment or official duties for any purpose where otherwise prohibited by law.”.

Page 4, line 25, strike out “(b)” and insert in lieu thereof “(c)”.

EXPLANATION OF AMENDMENTS

The amendments on pages 6, 8, 9, 14, 17, and 22 are technical amendments intended to simplify the language of the bill or correct typographical errors.

The amendment on page 12 eliminates the statutory requirement for requesting a return receipt on a certified notice of an alleged violation of the Act, leaving it up to the Civil Service Commission to determine the requirements on such notices, which might include restricted delivery as well as return receipt.

The amendment on page 4 inserts a new subsection in section 7323 to state that nothing therein authorizes the use by any employee of information available to him by virtue of his employment for any purpose where otherwise prohibited by law.

PURPOSE

The primary purposes of H.R. 8617 are two; one being to amend subchapter III of chapter 73, title 5, United States Code, so as to permit Federal civilian and postal employees to take part as they voluntarily choose to in their capacity as private citizens in the American political process at all levels of government, and the second being to prohibit the abuse of authority, the coercion of employees into non-voluntary political activity of any kind, and certain activities involving political contributions by employees.

H.R. 8617 also establishes an independent Board on Political Activities of Federal Employees to adjudicate promptly alleged violations of the law and sets forth provisions for the administration and oversight of the law.

BACKGROUND

Prior to 1939, regulation of political activity by Federal civil service employees was the result of executive branch action, Congress having refrained from imposing statutory restrictions beginning with the Second Session of the First Congress in 1791, when an amendment to bar political activity by collectors of an excise tax on distilled spirits was defeated in the House. The Civil Service Act of 1883, which established the concept of an institutionalized civil service system for Federal employees, did proscribe and provide penalties for certain activities related to the coercion of contributions or services of civil servants for political purposes or the conduct of political solicitations in government rooms or buildings.

President Chester A. Arthur issued the first civil service rules to implement the 1883 act, and while those rules did prohibit interference with any election, they did not specifically state to what extent Federal employees were permitted to voluntarily participate in electoral politics. President Theodore Roosevelt's Executive Order 642 of June 3, 1907, amended Civil Service Rule 1 to prohibit all political activity by employees in the competitive service which was related to active participation in campaigns or as a candidate, whether or not the activity was voluntary.

By 1907, then, two distinct but interrelated concerns were apparent, and still are. They are (1) the protection of civil service employees from coercion for involuntary contributions of money or services for political ends, and (2) the prohibition of partisan political activity, whether or not voluntary, related to political campaigning and candidacy. Present law does permit limited political activity by employees in certain local jurisdictions with high populations of Government employees.

The New Deal era gave rise to new concern because of the large number of persons employed in public works jobs funded by the Federal Government and allegations that there was widespread financial solicitation by local political party officials of workers as a condition of employment, primarily in the Works Project Administration. Those workers, not being in the competitive service, were not covered by the proscriptions of Civil Service Rule 1. An investigation by a Senate special committee ensued in 1938 and resulted in a report (S. Report 1, 76th Congress, 1st Session) recommending legislation to prohibit the political coercion of all Federal employees, whether or not in the classified civil service. The report contained no finding that the effectiveness of the Government was impaired by employees' voluntary political activity.

The so-called Hatch Act, prohibiting Federal employees from taking an active part in political activities, the forerunner of today's law as codified in section 7324 of title 5, United States Code, was enacted in 1939. No public hearings were conducted on the measure in either House or Senate.

The most significant amendments to the Hatch Act followed in 1940. Those amendments included provisions applying the restrictions to State and local governmental employees employed in activities funded by the Federal Government and incorporating more than 3,000 prior administrative determinations of the Civil Service Commission into the law on restricted activity. The restrictions on State and local employees were largely repealed by the Federal Campaign Practices Act of 1974 (Public Law 93-443).

STATEMENT

At the time it was enacted, the Hatch Act constituted a response to an acknowledged problem. But circumstances have changed. The strength and influence of the Civil Service Commission, coupled with the need for skilled personnel to fill increasingly complex Government jobs, have increased to the extent that the patronage system does not flourish as it once did. On June 30, 1974, Federal civilian employment totaled 2,893,119, including 1,302,631 with competitive career appointments, 346,112 with career conditional appointments, 906,310

with excepted permanent appointments and 338,066 with temporary and indefinite appointments.

There have been relatively recent concerns stemming from the revelation of special referral units operating within government agencies in violation of the merit system, though studies have not demonstrated that voluntary political activity, freely entered into in off duty hours, takes anything away from the integrity of public service. The problem arises when authority is abused and coercion exercised. The bill H.R. 8617 provides stronger employee protection against coercion than that which is provided by existing law.

Existing law, in the Committee's opinion, does not strike an adequate balance between the two compelling needs, which are preservation of basic rights of citizenship for 2.8 million Americans and the requirement of an impartial civil service insulated from pernicious partisanship.

The Commission on Political Activity of Government Personnel, in its 1968 report observed:

Since 1939, when the Hatch Act was enacted, the American political system has changed dramatically. The growth of Federal responsibilities, the parallel growth of technology in Government, and the need for skilled personnel are eroding away traditional patronage schemes. Not only has the American political system changed, but the growth of the merit principle and impartial administration of Government programs have been integral elements in this transformation.

Under the Hatch Act, the Civil Service Commission has worked to maintain high standards and integrity in public service consistent with the need for voluntary and desirable political activity by Government employees. By and large, the public employee wants and needs the protection from coercive activity which the Hatch Act affords. But the line between permissible and forbidden political conduct has been a shifting one. It could not remain fixed as political methods were altered and the Government developed in size and in the nature of its activities. Moreover, there are ever-increasing difficulties confronting public employees in ascertaining what the statutory restrictions mean under the Hatch Act, and in knowing what interpretation has been given to the act by the Civil Service Commission in rulings which often are not published or readily available in usable form."

As did that Commission, the Committee on Post Office and Civil Service encountered conflict between the two goals of the broadest possible participation in our political processes and the maintenance of a fair and impartial civil service. But it does not see the continuance of a merit system in public employment as being dependent upon maintenance of the severe restrictions on employees' first amendment rights that now exist. The committee agrees that employees who freely and voluntarily engage in political activities which would be permissible under H.R. 8617 as reported need protection against penalty from those in authority who might disagree with their

political views and actions, as well as against coercion by those who endeavor to enlist their involuntary support for political purposes.

H.R. 8617 has been drawn to achieve a proper balance. It prohibits those political activities which tend to erode public confidence in the integrity of the civil service and Government itself. It prohibits political activity on duty, in Government buildings, or in uniform. It bars solicitation of employees or members of their families by those with supervisory authority over them. It establishes an independent Board to adjudicate alleged violations, thus freeing the Civil Service Commission to concentrate on its functions of educating employees on their rights and prohibitions and on the investigation of alleged violations. And it provides for the disciplining of employees in the expected service in the same manner as applies to those in the competitive service, instead of making that a responsibility of the agency head as at present.

With these protections, including a new criminal provision providing penalties for anyone who would extort any contribution from a government employee for political purposes, Federal employees would be free to participate in the political processes of their communities, their States and their Nation as they choose. For those who would seek full-time elective office, however, leave, including leave without pay, would be mandatory.

COMMITTEE ACTION

S. 372, to restore to Federal civilian employees their rights to participate as private citizens in the political life of the nation, was introduced by Senator McGee with the cosponsorship of Senator Burdick on January 23, 1975. The committee had, during the second session of the 92d Congress, conducted hearings on legislation of similar purpose, delaying action then because of pending litigation centering on the constitutionality of the Hatch Act and because the Civil Service Commission had assured the Committee that it was at work on a set of provisions to clarify the Act and permit Federal employees a greater degree of political freedom.

The Supreme Court, on June 25, 1973, in the case of the United States Civil Service Commission vs. National Association of Letter Carriers, reversed a lower court's decision to uphold the constitutionality of the Hatch Act. However, the recommendations of the Civil Service Commission never were forthcoming.

H.R. 8617 was approved by the House of Representatives as a clean bill in lieu of H.R. 3000, a companion to S. 372. Hearings were held on H.R. 8617 and S. 372 on November 5 and 6, 1975. The Committee voted 7-2 on November 19, 1975, to report the bill, as amended, after approving the amendments incorporated in the reported bill by a voice vote. Six additional amendments proposed by Senator Fong were defeated, each by a 6-2 vote, as follows: For the amendments—Senators Fong and Bellmon. Opposed to the amendments—Senators McGee, Randolph, Burdick, Moss, Leahy, and Stevens.

The vote by which H.R. 8617 was ordered reported was: Yeas—Senators McGee, Randolph, Burdick, Moss, Hollings, Leahy, and Stevens. Nays—Senators Fong and Bellmon.

SECTIONAL ANALYSIS

Section 1 of the bill as reported provides that this Act may be cited as the "Federal Employees' Political Activities Act of 1975."

Subsection (a) of section 2 of the bill amends subchapter III of chapter 73 of title 5, United States Code, by rewriting seven existing sections (5 U.S.C. 7321-7327) and adding four new sections (5 U.S.C. 7328-7331), as follows:

Section 7321 provides that it is the policy of Congress to encourage employees to fully exercise their rights of voluntary political participation to the extent not expressly prohibited by law.

Section 7322 defines terms used in the Act.

Paragraph (1) defines "employee" to mean any individual, including the President and the Vice President, employed or holding office in: (A) an Executive agency; (B) the government of the District of Columbia; (C) the competitive service; or (D) the United States Postal Service or the Postal Rate Commission.

Paragraph (2) defines the term "candidate" as any individual who seeks nomination for election, or election, to an elective office, whether or not the individual is elected. An individual who is seeking to win a party's nomination in a primary election or in a convention, as well as an individual who has already been nominated, is included within the definition. Subparagraphs (A) and (B) of paragraph (2) establish the time at which an individual is deemed to seek nomination for election, or election, as that time when an individual has: (A) taken the action required to qualify for nomination for election, or election; or (B) received political contributions or made expenditures, or has given consent for any other person to receive political contributions or make expenditures, with a view to bringing about that individual's nomination for election, or election.

Paragraph (3) defines "political contribution." The committee intends that this definition be given a broad interpretation.

Subparagraph (A) of paragraph (3) provides that "political contribution" means a gift, subscription, loan, advance, or deposit of money or anything of value, made for the purpose of influencing the nomination for election, or election, of any individual to elective office or for the purpose of otherwise influencing the results of any election. The phrase "for the purpose of otherwise influencing the results of any election" reflects the intent that contributions made to influence the results of elections relating to matters other than political office, such as, bond issues or local referenda, are included within the term "political contribution".

Subparagraph (B) provides that the term "political contribution" includes a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a political contribution.

Subparagraph (C) provides that the term "political contribution" also includes the payment by any person, other than a candidate or a political organization, or compensation for the personal services of another person which are rendered to a candidate or political organization without charge.

Paragraph (4) defines "superior" to mean an employee, other than the President or the Vice President, who exercises supervision of, or control or administrative direction over, another employee. The def-

inition is intended to include those employees who, through the exercise of the authority of their position, may influence or affect the career advancement or working conditions of other employees. Thus an employee who has the authority to promote (or recommend or approve the promotion of) another employee, or to assign work to, or to evaluate the performance of, another employee would be deemed a "superior".

Paragraph (5) defines "elective officer" to mean any elective public office and any elective office of any political party or affiliated organization. The phrase "elective public office" is intended to include any Federal, State, or local office which is filled by the election of an individual. The phrase "elective office of any political party or affiliated organization" is intended to include offices of a political party or organization which are filled by the election of an individual.

Paragraph (6) defines "Board" to mean the Board on Political Activities established under section 7327 of title 5, as amended by the bill.

Section 7323 forbids direct or indirect use or attempt to use official authority to interfere with or affect an election or to intimidate, threaten, coerce, command, or influence any individual to vote or not vote as he may choose; any person to give or withhold a political contribution, or any person to engage or not to engage in any form of political activity.

Subsection (b) states that nothing in this section authorizes the use by any employee of any information coming to him in the course of his employment or official duties for any purpose where otherwise prohibited by law.

Subsection (c) defines "use of official authority or influence" as including, but not limited to, promises of benefit or threats of reprisal.

Section 7324 sets forth the prohibitions applicable to employees with regard to the soliciting, accepting, giving, or receiving of political contributions.

Paragraph (1) prohibits an employee from giving or offering to give a political contribution in return for any individual's vote, or abstention from voting, in any election.

Paragraph (2) prohibits an employee from soliciting, accepting, or receiving a political contribution in return for his vote or abstention from voting.

Paragraph (3) prohibits an employee from knowingly giving or handing over a political contribution to a superior of that employee. The committee's intention is that the bar to handing over a contribution to a superior should mean that an employee may not give a contribution to an individual with authority to affect his employment but does not mean that an employee may not make a contribution to another employee who may, for instance, possess a supervisory position in another agency.

Paragraph (4) sets forth two prohibitions against the solicitation or receipt of political contributions by employees.

Subparagraph (A) prohibits an employee from knowingly soliciting, accepting, or receiving, or being in any manner concerned with soliciting, accepting, or receiving, a political contribution from another employee (or a member of another employee's immediate family) with

respect to whom the employee is a superior. The inclusion of the phrase "member of an employee's immediate family" is intended to prohibit possible circumvention of the prohibition against a superior soliciting political contributions from an employee.

Subparagraph (B) prohibits an employee from knowingly soliciting, accepting, or receiving, or being in any manner concerned with soliciting, accepting, or receiving, a political contribution in any room or building occupied in the discharge of official duties by: (i) an individual employed or holding office in the Government of the United States, in the government of the District of Columbia, or in any agency or instrumentality of the foregoing; or (ii) an individual receiving any salary or compensation for services from money derived from the Treasury of the United States.

Section 7325 bars employees from engaging in political activity while on duty, in government offices or buildings, or while wearing a uniform or official insignia.

Subsection (b) provides that these prohibitions do not apply to The President, Vice President, or persons employed or assigned to them unless they hold career or career-conditional appointments, nor to the Mayor of the District of Columbia, or to the Chairman or Members of the Council of the District of Columbia.

Section 7326 provides, in subsection (a) that any employee who is a candidate for elective office, shall upon request, be granted leave without pay for the purpose of engaging in activities relating to such candidacy. It further requires that an employee who is a candidate for full-time elective office shall be placed on leave without pay either on the 90th day before any election, primary or general, in which he is a candidate or the day following the day on which he becomes a candidate, whichever is later. Such leave without pay status shall terminate on the day following the election or the day following the date on which the employee no longer is a candidate unless he is otherwise on leave. Subsection (b) provides that, notwithstanding 5 U.S.C. 6302(d), an employee who is a candidate for elective office, whether full-time or part-time, shall upon request, be granted accrued annual leave for the purposes of such candidacy. Subsection (c) requires prompt notification by an employee to his agency upon becoming a candidate and upon termination of such candidacy. Subsection (d) provides that the provisions of this section do not apply to an individual who is an employee by reason of holding an elective office.

The committee intends that employees who become candidates for elective office be permitted to use their accrued annual leave for that purpose, or to go on leave without pay for that purpose, with the added provision that an employee contesting for full-time elective office must be in leave without pay status upon qualifying as a candidate or 90 days prior to an election in which he is a candidate, whichever is later. The right to use accrued annual leave for purposes related to an employee's candidacy is granted notwithstanding the usual right of an agency to grant leave requests, but does not require the agency to advance annual leave which has not been earned.

The committee intends that the right to leave, either accrued annual leave or leave without pay, shall pertain only to bona fide candidates in order to permit activities related to candidacy. Thus, an agency would not be required to grant leave for purposes unrelated to an employee's candidacy.

Section 7327 establishes the Board on Political Activities of Federal Employees.

Subsection (a) establishes the Board and provides that its function shall be to hear and decide cases regarding violations of sections 7323, 7324, and 7325 of title 5. Thus, the Board's authority is adjudicatory only, with actual investigatory, prosecutorial, and enforcement authority being given to the Civil Service Commission under section 7328.

Subsection (b) provides that the Board be composed of three members appointed by the President by and with the advice and consent of the Senate.

Subsection (c) provides that the members shall be chosen on the basis of their professional qualifications from among individuals who, at the time of their appointment to the Board, are employees as defined under section 7322(1) of title 5, as amended by the bill.

Paragraph (1) of subsection (d) provides that the members are appointed for a term of 3 years, and the terms are staggered so that one member's term expires each year. An individual appointed to fill a vacancy may be appointed only for the unexpired term of the member he succeeds.

Paragraph (2) of subsection (d) provides that if a member of the Board ceases to be an employee due to separation from the service, he may not continue as a member of the Board for longer than 60 days after he becomes separated.

Subsection (e) provides that the Board shall meet at the call of the Chairman.

Subsection (f) provides that all decisions of the Board with respect to the exercise of its duties and powers must be made by a majority vote of the Board.

Subsection (g) prohibits a member of the Board from delegating, except as otherwise expressly provided, his vote or any decision making authority vested in the Board.

Subsection (h) requires the Board to prepare and publish in the Federal Register written rules for the conduct of its activities. Subsection (h) further provides that the Board's official seal shall be judicially recognized and requires the Board to have its office in or near the District of Columbia. The Board, however, may meet and exercise its powers anywhere in the United States, and it is intended that adjudicatory hearings will be held by the Board at locations which take into consideration the convenience of the parties.

Subsection (i) requires the Civil Service Commission to provide clerical and professional personnel and administrative support. It is intended that personnel such as secretaries and attorneys will be furnished to the Board from the Commission and that administrative expenses such as travel expenses for Board members will be the responsibility of the Commission. The Chairman of the Board is required to determine what clerical and professional personnel and administrative support are appropriate and necessary, and personnel furnished to the Board are responsible to the Chairman of the Board.

Subsection (j) requires the Administrator, General Services Administration, to furnish suitable office space, appropriately furnished and equipped.

Paragraph (1) of subsection (k) provides that members shall receive no additional pay on account of their service on the Board. Par-

agraph (2) of subsection (k) provides that members are entitled to leave without loss of or reduction in pay, leave, or performance or efficiency rating during a period of absence while in the actual performance of the Board's business.

Section 7328 provides for enforcement of the prohibitions on political activity and establishes procedures for the investigation and adjudication of violations of such prohibitions.

Subsection (a) requires the Civil Service Commission to investigate reports and allegations of any activity prohibited by section 7323, 7324, or 7325 of title 5, as amended by the bill. It is not the committee's intent that enforcement efforts by the Commission be limited to responding to formal reports or allegations, but that efforts include steps necessary to insure that the prohibitions are observed by employees.

Subsection (b) requires the Commission to provide an employee under investigation with the opportunity to make a statement and submit documentary evidence concerning matters under investigation. This subsection also authorizes Commission employees lawfully assigned to investigate violations of subchapter III to administer oaths in the course of an investigation.

Paragraph (1) of section 7328(c) requires the Commission, if it appears after investigation that a violation has not occurred, to so notify the employee and the employing agency.

If it appears to the Commission after investigation that a violation has occurred, the Commission is required under paragraph (2) of section 7328(c) to submit to the Board and serve upon the employee a notice which must: (A) set forth specifically and in detail the charges; (B) advise the employee of the penalties which may be imposed; (C) specify a period of not less than 30 days within which the employee may file with the Board a written answer to the charges; and (D) advise the employee that unless a written answer is filed within the prescribed time, the Board is authorized to treat the failure to answer as an admission of the charges set forth in the notice and as a waiver by the employee of the right to a hearing on the charges.

Paragraph (3) of section 7328(c) establishes a separate procedure for cases concerning elected officials or employees appointed by the President against whom the Board has no authority to direct disciplinary action. The only individuals to whom the procedure under paragraph (3) applies are: (A) the Vice President; (B) an employee appointed by the President by and with the advice and consent of the Senate; (C) an employee whose appointment is expressly required by statute to be made by the President; (D) the Mayor of the District of Columbia; or (E) the Chairman or a member of the Council of the District of Columbia. If it appears to the Commission that a violation of section 7323, 7324, or 7325 has been committed by one of these individuals, it is required to refer the case to the Attorney General and to report the nature and details of the violation to the President and to the Congress.

Subsection (d) prescribes the procedures for hearings concerning violations of section 7323, 7324, and 7325.

Paragraph (1) of section 7328(d) provides that if a written answer is not filed within the time allowed, the Board is authorized to issue its final decision and order without further proceedings.

If an answer is filed, paragraph (2) requires a hearing on the record conducted by a hearing examiner. Except as otherwise expressly provided under subchapter III, the hearing shall be conducted in accordance with the requirements of subchapter II of chapter 5 of title 5. Paragraph (2) requires that the hearing be commenced within 30 days after the answer is filed, and that it be conducted without unreasonable delay. As soon as possible after the conclusion of the hearing, the hearing examiner is required to serve his recommended decision upon the Board, the Commission, and the employee, with notice that exceptions to such decision may be filed within 30 days. The Board is required to issue its final decision within 60 days after the recommended decision is served.

The last sentence in paragraph (2) provides that an employee shall not be removed from active duty by reason of the alleged violation of subchapter III before the effective date of the Board's final order.

Subsection (e) authorizes the Board to issue subpoenas, order depositions, and compel testimony of an employee.

Paragraph (1) of section 7328(e) authorizes any member of the Board, upon written request of the Commission or an employee who is charged, to require by subpoena the attendance and testimony of witnesses and the production of documentary or other evidence, which is relevant to the proceeding or investigation. Paragraph (1) further authorizes any member of the Board and any hearing examiner authorized by the Board to administer oaths, examine witnesses, and receive evidence. In the case of a refusal to obey a subpoena, the Board is authorized to seek judicial enforcement in the United States district court for the judicial district where the subpoena is served or where the person subject to the subpoena resides. Failure to obey a court order enforcing the subpoena may be punished as a contempt of court.

Paragraph (2) of section 7328(e) authorizes the Board (or a member designated by the Board) to order the taking of written depositions which shall be subscribed by the deponent.

Paragraph (3) of section 7328(e) authorizes the Board to compel the testimony or production of evidence by an employee notwithstanding any claim of the privilege against self-incrimination. Paragraph (3) further provides that no employee, having claimed the privilege against self-incrimination, shall be prosecuted or subjected to any penalty or forfeiture for or on account of the matter about which the employee has testified or produced evidence and, in addition, that no compelled testimony or evidence shall be used as evidence in any criminal proceeding (other than a proceeding for perjury) against the employee in any court.

Subsection (f) provides for judicial review of an order of the Board. An employee upon whom a penalty is imposed is permitted 30 days from the issuance of the Board's order to institute an action for review in the United States District Court for the District of Columbia or in the district court for the judicial district in which the employee resides or is employed. An order of the Board may be stayed only upon an order of the court.

Upon receiving the required copy of the summons and complaint, the Board is required to certify and file with the court the record of the proceeding. If, upon application, the court determines to its sat-

isfaction that (1) additional evidence may materially effect the result of the proceeding, and (2) there were reasonable grounds for failure to adduce the evidence at the administrative hearing, it may order further proceedings before the Board, and if further proceedings are ordered, the Board may modify its original findings of fact or its order and shall file with the court such modified findings or order. The Board's findings of fact are conclusive if supported by substantial evidence. If the court determines that the order is not in accordance with law it shall remand the proceeding to the Board with appropriate instructions and may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred by the employee.

Subsection (g) provides that the Commission or the Board, in its discretion, may proceed with an investigation or proceeding notwithstanding the fact that a concurrent criminal investigation is in progress. While it has generally been the practice in the past to hold a civil investigation in abeyance pending the results of a criminal investigation into the same or related matters, the result often has been a delay of 12 to 18 months in the civil investigation. In view of this experience, it is the Committee's belief that in most instances prompt resolution of proceedings under subchapter III is of primary importance.

Section 7329 sets forth the penalties which the Board may order in the case of an employee who is found to have violated sections 7323, 7324, and 7325, and specifies the manner in which the penalty shall be imposed.

Subsection (a) provides that, subject to and in accordance with the procedures for investigation and hearing under section 7328, the Board shall, upon finding that an employee has violated any provision of section 7323, 7324, or 7325 of title 5, enter a final order directing disciplinary action against the employee. In accordance with section 7327(f), a majority vote of the Board is required.

The three paragraphs of subsection (a) set forth the range of disciplinary action which the Board may order. Under paragraph (1) the Board may order the removal of an employee and, in addition if removal is ordered, the Board shall prescribe a period of time during which the employee may not be reemployed in any position (other than an elected position) in which the employee would be subject to the provisions of subchapter III.

Under paragraph (2) of subsection (a) the Board may order the suspension without pay of an employee for such period as the Board may prescribe. Under paragraph (3) of subsection (a) the Board may, in its discretion order lesser forms of penalties as it deems appropriate.

Subsection (b) requires the Board to notify the Commission, the employee, and the employing agency of any penalty it has imposed. It is then the responsibility of the employing agency to effect the disciplinary action, and that agency is required to certify to the Board the measures it has undertaken to implement the penalty ordered by the Board.

Subsection (a) of section 7330 requires the Commission to establish and conduct a continuing program to inform all employees of their

rights of political participation and to educate employees with respect to those political activities which are prohibited. Subsection (a) requires the Commission to annually inform each employee, individually in writing, of his political rights and the restrictions not be less than 60 days prior to the earliest primary election for State or Federal elective office in the State where an employee is employed. If a State has no primary election, the date of the earliest general election applies. For purposes of this section, the term "State" includes the District of Columbia, and the Commonwealths, territories, and possessions of the United States. The manner in which the required information is provided to each employee is left to the discretion of the Commission.

Subsection (b) requires the Commission to submit, on or before March 30 of each calendar year, a report regarding the discharge of its responsibilities under subchapter III during the preceding calendar year to the Speaker of the House of Representatives and the President pro tempore of the Senate for referral to the appropriate committees of the Congress. The report is required to include information concerning: (1) the number of investigations conducted under section 7328 and the results of those investigations; (2) the name and position or title of each individual involved, and the funds expended by the Commission, in carrying out the educational program required under subsection (a); and (3) an evaluation of the educational program which describes the manner in which the Commission has carried out the program and the effectiveness of the program with regard to insuring that employees understand their political rights and the restrictions under subchapter III.

Section 7331 requires the Civil Service Commission to prescribe such rules and regulations as may be necessary to carry out its responsibilities under this subchapter.

Subsection (b) of section 2 of the bill contains several technical and conforming amendments to title 5, United States Code.

Paragraph (1) amends section 8332(k)(1), relating to civil service retirement coverage, section 8706(e), relating to civil service life insurance coverage, and section 8906(e)(2), relating to civil service health insurance coverage, by inserting a reference to leave without pay granted under section 7326(a) of title 5, as amended by this bill, in each of those sections. The effect of these amendments is to permit an employee who is a candidate and who is granted leave without pay under section 7326(a) of title 5, as amended by the bill, to elect, within 60 days after entering on leave without pay, to continue under the civil service retirement, life insurance, or health insurance programs by arranging through his employing agency to pay currently into the appropriate fund an amount equal to the employee and the agency contributions. The provisions of subsection (b) of section 2 relating to retirement, health insurance, and retirement coverage, accord the same treatment to employees who enter on leave without pay for purposes of engaging in candidacy for elective office as is presently accorded to employees who enter on leave without pay to serve as officers of employee organizations.

Paragraph (2) amends section 3302 of title 5, relating to the President's authority to prescribe rules for necessary exceptions from

certain provisions of title 5, by striking out the references to sections 7321 and 7322 in existing subchapter III of chapter 73 of title 5. Under the new subchapter III, as revised by the bill, all exceptions from the provisions of that subchapter are expressly set forth in the subchapter itself.

Paragraph (3) amends section 1308(a) of title 5, relating to annual reports of the Civil Service Commission, by striking out paragraph (3) relating to reports of the Commission concerning its actions under existing section 7325 of title 5. The reporting requirements of section 7330 of title 5, as provided by the bill, supersede the existing reporting requirements. The remaining paragraph of section 1308(a) is appropriately redesignated.

Paragraph (4) corrects an existing technical error in the second sentence of section 8332(k) (1) by striking out "second" and inserting in lieu thereof "last".

Paragraph (5) amends the section analysis for subchapter III of chapter 73 of title 5 to reflect the changes made by section 2(a) of the bill.

Section 2(c) of the bill amends sections 602 and 607 of title 18, United States Code, relating to solicitations and making of political contributions, by adding a new sentence at the end of each section to provide that those sections do not apply to any activity of an employee, as defined in section 7322(1) of title 5, unless such activity is prohibited by section 7324 of that title. Since section 7324 of the bill, relating to solicitations and making of political contributions, permits employees to engage in certain activities which are presently prohibited under sections 602 and 607, this amendment is necessary to insure that an employee is not criminally liable for an activity that is permissible under the bill. The amendments to the criminal provisions pertain only to activities by "employees" as defined under section 7322(1) of title 5.

Paragraph (2) of subsection (c) adds a new section to chapter 29 of title 18, making it a crime punishable by imprisonment for not less than two nor more than three years or a fine of not more than \$5,000 or more for anyone to, by the commission of or threat of physical violence to, or economic sanction against, any person, obtain or endeavor to obtain any contribution for an officer or employee of the United States or a person receiving salary or compensation from money derived from the Treasury of the United States.

Section 2(d) amends section 6 of the Voting Rights Act of 1965 (42 U.S.C. 1973d), relating to the appointment of Federal voting examiners, by striking out "the provisions of section 9 of the Act of August 2, 1939, as amended (5 U.S.C. 118i), prohibiting partisan political activity", and inserting "the provisions of subchapter III of chapter 73 of title 5, United States Code, relating to political activities".

Section 2(e) amends sections 103(a) (4) (D) and 203(a) (4) (D) of the District of Columbia Public Education Act, relating to the employment of officers and educational employees of Federal City College and the Washington Technical Institute, by striking out "sections 7324 through 7327 of title 5" and inserting "section 7325 of title 5".

Section 2(f) provides that the amendments made by section 2 of the bill shall take effect on the ninetieth day after the date of enactment of the act, except for the provisions of section 7326(a) (2), as amended, which shall take effect 120 days after enactment.

Section 2(g) requires the Civil Service Commission to, no later than 60 days after enactment, prepare and transmit to the Congress a report containing standards and criteria by which determinations will be made as to which elective offices will be considered part-time elective offices for the purposes of administering the mandatory leave without pay provisions of section 7326(a) (2).

Cost

Under the provisions of H.R. 8617, the investigation of alleged violations will be conducted by the Civil Service Commission, as they now are. Adjudication of cases arising under the act will move to the new Board established for that purpose, which will receive personnel and administrative support from the Civil Service Commission and the General Services Administration. Based on past experience, the committee does not contemplate a great number of cases arising that would require adjudication, however. In fiscal year 1974, for example, the Commission, under its present procedures, processed 37 complaints, closing 17 cases without investigation and 14 subsequent to investigation. Four suspensions and two removals were effected as the result of formal charges. Consequently, the committee does not anticipate any significant cost to the Federal Government arising out of this legislation. Additional costs will be incurred as the result of the educational endeavor required of the Commission, but the committee has no information on which to base an estimate.

It is the committee's hope that such standards and criteria will not be so narrowly drawn as to exclude great numbers of elective offices.

AGENCY VIEWS

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., November 4, 1975.

HON. GALE MCGEE,
Chairman, Committee on Post Office and Civil Service,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your letter requesting the Commission's views on S. 372, a bill "To restore to Federal civilian employees their rights to participate, as private citizens, in the political life of the Nation, and for other purposes." This letter also reflects the Commission's views on H.R. 8617, a related bill now pending before your committee.

The Commission opposes enactment of these bills for several reasons.

In our opinion, the primary thrust of S. 372 and H.R. 8617 is to repeal the existing restrictions on political activities as set forth at 5 U.S.C. 7324(a) (2). This provision prohibits Federal employees and employees of the District of Columbia from participation in partisan political management and partisan political campaigns.

A secondary thrust of S. 372 is to revise and expand 5 U.S.C. 7323 so as to clarify responsibilities and procedures under this section. The Commission does not disagree with the basic intent of the latter provision. We do note in passing that this section of the bill appears to give the Commission jurisdiction to proceed in regard to Members of Congress, employees of Congress, and officers of the uniformed services (page 4, lines 14, 15). Inasmuch as such jurisdiction would be rather unusual we are uncertain if this was the actual intent of the bill.

The Commission's major area of concern, however, is with the primary thrust of S. 372 and H.R. 8617 which would allow to employees virtually unlimited political activity, both partisan and nonpartisan, even at the national level. This goes far beyond the proposals to liberalize the political activity restrictions as recommended by the Commission on Political Activity of Government Personnel.

Where advancement in the public service is predicated exclusively upon merit, the entire society benefits from a more efficient and honest public service. Since 1883, this Commission, acting at the direction of the President and under Congressional enactments, has endeavored to insure that Federal employment and Federal personnel management are anchored on the principle of merit, free from the influence of political partisanship.

We are convinced that some restriction on the ability of public employees to identify themselves prominently with partisan political party success is essential to an effective merit system. While the political activity of specific employees may appear to be innocuous in itself, the effect of such activity generally is that public employees become identified with the aspirations of political parties and candidates, and partisan considerations are injected into the career service. The identification of a civil servant with a political party through active participation in party affairs compromises that employee in the eye of the public, and most certainly in the eyes of an opposing party during a change in administrations. Competition among employees for advancement and favor based on their contributions of money or services to political parties would also detract from the efficient administration of public business. Our conclusion is that the intrusion of partisan considerations into the career Federal service, even in appearance, would constitute a devastating blow to merit concepts, and to employee morale as well.

We, of course, favor the retention of the prohibition on the misuse of official authority to influence elections, as well as the restrictions on the solicitation and exchange of political contributions among Federal officers and employees. However, in our view, those limitations alone, even as revised and expanded by S. 372, and to a lesser extent by H.R. 8617, are wholly inadequate to protect employees from the subtle pressures that would impel them to engage in other forms of political activity in order to protect or enhance their employment situation. Without the protection of a public policy that limits the political activities of public employees, an employee would be vulnerable to indirect influences to support the political party or candidates favored by those in a position to affect the employee's government career. Under current restrictions everyone knows that a covered employee cannot serve political purposes, except at the risk of loss of employment. This protection of the Federal employee would be discarded by the proposed legislation.

We think it significant that after nearly a year of study of the Hatch Act, the Commission on Political Activity of Government Personnel concluded that protection of a career system based on merit not only "requires strong sanctions against coercion . . . [but] also requires some limits on the role of the Government employee in politics." Volume I Report of the Commission on Political Activity of Government Personnel—Recommendations, page 3.

Apparently employees, too, feel some apprehension regarding the effect of amendments that would permit more political activity on their part. A survey of Federal employees, conducted by the same Commission in 1967, disclosed that more than half (52%) of those contacted believed that such changes would affect promotions, decisions, job assignments, and similar actions. Volume II, Report of the Commission on Political Activity of Government Personnel—Research, pages 21 and 78 (1968). We believe the employees' fears stem from a realistic view of politics in relation to the public service.

The foregoing should in no way, of course, be construed as a total indictment against political activity of Federal employees. We would note, for example, that under existing law Federal employees are free to engage in a wide variety of activities. The Hatch Act does not circumscribe the entire field of political activity, but, rather, carefully directs its prohibitions to what Congress regarded as particular sources of danger to the public service, namely, direct participation by employees in the management and campaigns of major political parties. A wide range of freedom to participate in the political processes of the Nation, State, and the local community is permitted under the existing law.

Accordingly, the Commission strongly opposes enactment of these bills.

The Office of Management and Budget advises that enactment of S. 372 or H.R. 8617 would not be in accord with the program of the President.

By direction of the Commission :

Sincerely yours,

ROBERT HAMPTON, *Chairman.*

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., November 25, 1975.

HON. GALE W. MCGEE,
*Chairman, Committee on Post Office and Civil Service, U.S. Senate,
Washington, D.C.*

DEAR MR. CHAIRMAN: This is in reply to the Committee's requests for the views of this Office on S. 372 and H.R. 8617, both bills concerned with the Hatch Act.

The principal purpose of these bills is to repeal the restrictions in existing law on active participation by Federal employees in partisan political campaigning and managing.

We are opposed to the elimination of such restrictions. As noted in the report and testimony of the Civil Service Commission, the effect on such repeal would be to allow Federal employees virtually unlimited partisan political activity. We believe the identification of Federal employees with political parties through their active role in party affairs would inevitably introduce partisan considerations into the administration of Federal programs. This would seriously undermine public confidence in the integrity of Government operations and would adversely affect employees morale and efficiency as well.

Moreover, we note that H.R. 8617 would require the Civil Service

Commission to submit proposed implementing regulations to Congress, subject to disapproval by either House within 30 days. This provision violates the doctrine of separation of powers and represents an unconstitutional exercise of Congressional power.

Accordingly, for the reasons stated above, we strongly recommend against enactment of S. 372 or H.R. 8617. Enactment of these bills would not be in accord with the program of the President.

Sincerely,

JAMES M. FREY,
Assistant Director for Legislative Reference.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., November 13, 1975.

B-138229

HON. GALE W. MCGEE,
*Chairman, Committee on Post Office and Civil Service,
U.S. Senate*

DEAR MR. CHAIRMAN: By letter of October 31, 1975, you requested our views and comments on H.R. 8617, 94th Cong., 1st Sess., an Act "[t]o restore to Federal civilian and Postal Service employees their rights to participate voluntarily, as private citizens, in the political processes of the Nation, to protect such employees from improper political solicitations, and for other purposes.

The legislation would amend subchapter III—Political Activities—of chapter 73 of title 5, United States Code. On June 10, 1975, we reported to the House Committee on Post Office and Civil Service on H.R. 3000, 94th Cong., 1st Sess. Subsequently, H.R. 8617 was introduced as a clean bill in lieu of H.R. 3000 as approved by the unanimous voice vote of the Subcommittee on Employee Political Rights and Intergovernmental Programs.

We noted in our report on H.R. 3000 that its enactment would shift emphasis from removal of Federal employees for violations of the "Hatch Act" to lesser penalties, and correspondingly reduce the protection of Federal civilian employees from improper political solicitations.

Additionally, we stated our concern incident to increasing political activity on the part of Federal employees, including candidacy for nomination or election to public office, without involving their official authority or influence. H.R. 8617 represents a substantial effort to establish a system that would bring about increased voluntary political participation by Federal employees without involving their official authority or influence. On balance, however, we believe, as perviously stated, that active participation by a Federal employee in political activities could involve or give the appearance of a conflict-of-interest situation. Accordingly, it is recommended that the legislation not be enacted.

Sincerely yours,

ROBERT F. KELLER,
Deputy Comptroller General of the United States.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows (existing law in which no change is proposed is shown in roman; existing law proposed to be omitted is enclosed in black brackets; new matter is shown in italic):

TITLE 5, UNITED STATES CODE

* * * * *

PART II—THE UNITED STATES CIVIL SERVICE COMMISSION

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Chapter 13—Special Authority

* * * * *

§ 1308. Annual reports

(a) The Civil Service Commission shall make an annual report to the President for transmittal to Congress. The report shall include—

(1) a statement of the Commission's actions in the administration of the competitive service, the rules and regulations and exceptions thereto in force, the reasons for exceptions to the rules the practical effects of the rules and regulations, and any recommendations for the more effectual accomplishment of the purposes of the provisions of this title that relate to the administration of the competitive service;

(2) the results of the incentive awards program authorized by chapter 45 of this title with related recommendations; *and*

[(3) at the end of each fiscal year, the names, addresses, and nature of employment of the individuals on whom the Commission has imposed a penalty for prohibited political activity under section 7325 of this title with a statement of the facts on which action was taken, and the penalty imposed; and]

[(4)](3) a statement, in the form determined by the Commission with the approval of the President, on the training of employees under chapter 41 of this title, including—

(A) a summary of information concerning the operation and results of the training programs and plans of the agencies;

(B) a summary of information received by the Commission from the agencies under section 4113(b) of this title; and

(C) the recommendations and other matters considered appropriate by the President or the Commission or required by Congress.

* * * * *

Part III—Employees

* * * * *

Subpart B—Employment and Retention

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Chapter 33—Examination, Selection, and Placement

* * * * *

Subchapter I—Examination, Certification, and Appointment

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§ 3302. Competitive service; rules

The President may prescribe rules governing the competitive service. The rules shall provide, as nearly as conditions of good administration warrant, for—

(1) necessary exceptions of positions from the competitive service; and

(2) necessary exceptions from the provisions of sections 2951, 3304(a), 3306(a) (1), 3321, 7152, [7153, 7321, and 7322] and 7153 of this title.

Each officer and individual employed in an agency to which the rules apply shall aid in carrying out the rules.

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Subpart F—Employee Relations

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Chapter 73—Suitability, Security, and Conduct

* * * * *

Subchapter III—Political Activities

Sec.

- 7321. Political contributions and services.
- 7322. Political use of authority or influence; prohibition.
- 7323. Political contributions; prohibition.
- 7324. Influencing elections; taking part in political campaigns; prohibitions; exceptions.
- 7325. Penalties.
- 7326. Nonpartisan political activity permitted.
- 7327. Political activity permitted; employees residing in certain municipalities.

Sec.

- 7321. *Political participation.*
- 7322. *Definitions.*
- 7323. *Use of Official authority or influence; prohibition.*
- 7324. *Solicitation; prohibition.*
- 7325. *Political activities on duty; prohibition.*
- 7326. *Leave for candidates for elective office.*
- 7327. *Board on Political Activities of Federal Employees.*

7328. *Investigation; procedures; hearing.*
 7329. *Penalties.*
 7330. *Educational program; reports.*
 7331. *Regulations.*

* * * * *

[Subchapter III—Political Activities

[§ 7321. Political contributions and services

[The President may prescribe rules which shall provide, as nearly as conditions of good administration warrant, that an employee in an Executive agency or in the competitive service is not obliged, by reason of that employment, to contribute to a political fund or to render political service, and that he may not be removed or otherwise prejudiced for refusal to do so.

[§ 7322. Political use of authority or influence; prohibition

[The President may prescribe rules which shall provide, as nearly as conditions of good administration warrant, that an employee in an Executive agency or in the competitive service may not use his official authority or influence to coerce the political action of a person or body.

[§ 7323. Political contributions; prohibition

[An employee in an Executive agency (except one appointed by the President, by and with the advice and consent of the Senate) may not request or receive from, or give to, an employee, a Member of Congress, or an officer of a uniformed service a thing of value for political purposes. An employee who violates this section shall be removed from the service.

[§ 7324. Influencing elections; taking part in political campaigns; prohibitions; exceptions

[(a) An employee in an Executive agency or an individual employed by the government of the District of Columbia may not—

[(1) use his official authority or influence for the purpose of interfering with or affecting the result of an election; or

[(2) take an active part in political management or in political campaigns.

For the purpose of this subsection, the phrase “an active part in political management or in political campaigns” means those acts of political management or political campaigning which were prohibited on the part of employees in the competitive service before July 19, 1940, by determinations of the Civil Service Commission under the rules prescribed by the President.

[(b) An employee or individual to whom subsection (a) of this section applies retains the right to vote as he chooses and to express his opinion on political subjects and candidates.

[(c) Subsection (a) of this section does not apply to an individual employed by an educational or research institution, establishment, agency, or system which is supported in whole or in part by the District of Columbia or by a recognized religious, philanthropic, or cultural organization.

[(d) Subsection (a) (2) of this section does not apply to—

[(1) an employee paid from the appropriation for the office of the President;

[(2) the head or the assistant head of an Executive department or military department;

[(3) an employee appointed by the President, by and with the advice and consent of the Senate, who determines policies to be pursued by the United States in its relations with foreign powers or in the nationwide administration of Federal laws;

[(4) the Mayor of the District of Columbia, the members of the Council of the District of Columbia, or the Chairman of the Council of the District of Columbia, as established by the District of Columbia Self-Government and Governmental Reorganization Act; or

[(5) the Recorder of Deeds of the District of Columbia.

[§ 7325. Penalties

[An employee or individual who violates section 7324 of this title shall be removed from his position, and funds appropriated for the position from which removed thereafter may not be used to pay the employee or individual. However, if the Civil Service Commission finds by unanimous vote that the violation does not warrant removal, a penalty of not less than 30 days' suspension without pay shall be imposed by direction of the Commission.

[§ 7326. Nonpartisan political activity permitted

[Section 7324(a) (2) of this title does not prohibit political activity in connection with—

[(1) an election and the preceding campaign if none of the candidates is to be nominated or elected at that election as representing a party any of whose candidates for presidential elector received votes in the last preceding election at which presidential electors were selected; or

[(2) a question which is not specifically identified with a National or State political party or political party of a territory or possession of the United States.

For the purpose of this section, questions relating to constitutional amendments, referendums, approval of municipal ordinances, and others of a similar character, are deemed not specifically identified with a National or State political party or political party of a territory or possession of the United States.

[§ 7327. Political activity permitted; employees residing in certain municipalities

[(a) Section 7324(a) (2) of this title does not apply to an employee of The Alaska Railroad who resides in a municipality on the line of the railroad in respect to political activities involving that municipality.

[(b) The Civil Service Commission may prescribe regulations permitting employees and individuals to whom section 7324 of this title applies to take an active part in political management and political campaigns involving the municipality or other political subdivision in which they reside, to the extent the Commission considers it to be in their domestic interest, when—

[(1) the municipality or political subdivision is in Maryland or Virginia and in the immediate vicinity of the District of Columbia, or is a municipality in which the majority of voters are employed by the Government of the United States; and

【(2) the Commission determines that because of special or unusual circumstances which exist in the municipality or political subdivision it is in the domestic interest of the employees and individuals to permit that political participation.】

Subchapter III—Political Activities

§ 7321. Political participation

It is the policy of the Congress that employees should be encouraged to fully exercise, to the extent not expressly prohibited by law, their rights of voluntary participation in the political processes of our Nation.

§ 7322. Definitions

For the purpose of this subchapter—

(1) “employee” means any individual, including the President and the Vice President, employed or holding office in—

(A) an Executive agency,

(B) the government of the District of Columbia,

(C) the competitive service, or

(D) the United States Postal Service or the Postal Rate Commission;

but does not include a member of the uniformed services;

(2) “candidate” means any individual who seeks nomination for election, or election, to any elective office, whether or not such individual is elected, and, for the purpose of this paragraph, an individual shall be deemed to seek nomination for election, or election, to an elective office, if such individual has—

(A) taken the action required to qualify for nomination for election, or election, or

(B) received political contributions or made expenditures, or has given consent for any other person to receive political contributions or make expenditures, with a view to bringing about such individual's nomination for election, or election, to such office;

(3) “political contribution”—

(A) means a gift, subscription, loan, advance, or deposit of money or anything of value, made for the purpose of influencing the nomination for election, or election, of any individual to elective office or for the purpose of otherwise influencing the results of any election;

(B) includes a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a political contribution for any such purpose; and

(C) includes the payment by any person, other than a candidate or a political organization, of compensation for the personal services of another person which are rendered to such candidate or political organization without charge for any such purpose;

(4) “superior” means an employee (other than the President or the Vice President) who exercises supervision of, or control or administrative direction over, another employee;

(5) “elective office” means any elective public office and any elective office of any political party or affiliated organization; and

(6) "Board" means the Board on Political Activities of Federal Employees established under section 7327 of this title.

§ 7323. Use of official authority or influence; prohibition

(a) An employee may not directly or indirectly use or attempt to use the official authority or influence of such employee for the purpose of—

- (1) interfering with or affecting the result of any election; or
- (2) intimidating, threatening, coercing, commanding, influencing, or attempting to intimidate, threaten, coerce, command, or influence—

(A) any individual for the purpose of interfering with the right of any individual to vote as such individual may choose, or of causing any individual to vote, or not to vote, for any candidate or measure in any election;

(B) any person to give or withhold any political contribution; or

(C) any person to engage, or not to engage, in any form of political activity whether or not such activity is prohibited by law.

(b) Nothing in this section authorizes the use by any employee of any information coming to him in the course of his employment or official duties for any purpose where otherwise prohibited by law.

(c) For the purpose of subsection (a) of this section, use of official authority or influence includes, but is not limited to, promising to confer or conferring any benefit (such as appointment, promotion, compensation, grant, contract, license, or ruling), or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, compensation, grant, contract, license, or ruling).

§ 7324. Solicitation; prohibition

An employee may not—

(1) give or offer to give a political contribution to any individual either to vote or refrain from voting, or to vote for or against any candidate or measure, in any election;

(2) solicit, accept, or receive a political contribution to vote or refrain from voting, or to vote for or against any candidate or measure, in any election;

(3) knowingly give or hand over a political contribution to a superior of such employee; or

(4) knowingly solicit, accept, or receive, or be in any manner concerned with soliciting, accepting, or receiving, a political contribution—

(A) from another employee (or a member of another employee's immediate family) with respect to whom such employee is a superior; or

(B) in any room or building occupied in the discharge of official duties by—

(i) an individual employed or holding office in the Government of the United States, in the government of the District of Columbia, or in any agency or instrumentality of the foregoing; or

(ii) an individual receiving any salary or compensation for services from money derived from the Treasury of the United States.

§7325. Political activities on duty; prohibition

(a) *An employee may not engage in political activity—*

(1) *while such employee is on duty,*

(2) *in any room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States, in the government of the District of Columbia, or in any agency or instrumentality of the foregoing, or*

(3) *while wearing a uniform or official insignia identifying the office or position of such employee.*

(b) *The provisions of subsection (a) of this section shall not apply to—*

(1) *the President and the Vice President;*

(2) *an individual—*

(A) *paid from the appropriation for the White House Office,*

(B) *paid from funds to enable the Vice President to provide assistance to the President, or*

(C) *on special assignment to the White House Office, unless such individual holds a career or career-conditional appointment in the competitive service.*

(3) *the Mayor of the District of Columbia, the Chairman or a member of the Council of the District of Columbia, as established by the District of Columbia Self-Government and Governmental Reorganization Act.*

§ 7326. Leave for candidates for elective office

(a) (1) *An employee who is a candidate for elective office shall, upon the request of such employee, be granted leave without pay for the purpose of allowing such employee to engage in activities relating to such candidacy.*

(2) *Any employee who is a candidate for elective office shall be placed on leave without pay effective beginning on whichever of the following dates is the later:*

(A) *the 90th day before any election (including a primary election, other than a primary election in which such employee is not a candidate) for that elective office, or*

(B) *the day following the date on which the employee became a candidate for elective office.*

Such leave shall terminate on the day following the election or the day following the date on which the employee is no longer a candidate for elective office, whichever first occurs, unless the employee is otherwise on leave. The Civil Service Commission shall, upon application, exempt from the application of this paragraph any employee who is a candidate for any part-time elective office.

(b) *Notwithstanding section 6302(d) of this title, an employee who is a candidate for elective office shall, upon the request of such employee, be granted accrued annual leave for the purpose of allowing such employee to engage in activities relating to such candidacy. Such leave shall be in addition to leave without pay of such employee under subsection (a) of this section.*

(c) *An employee shall promptly notify the agency in which he is employed upon becoming a candidate for elective office and upon the termination of such candidacy.*

(d) *The provisions of this section shall not apply in the case of an individual who is an employee by reason of holding an elective public office.*

§ 7327. Board on Political Activities of Federal Employees

(a) *There is established a board to be known as the Board on Political Activities of Federal Employees. It shall be the function of the Board to hear and decide cases regarding violations of sections 7323, 7324, and 7325 of this title.*

(b) *The Board shall be composed of 3 members, appointed by the President, by and with the advice and consent of the Senate. One member shall be designated by the President as Chairman of the Board.*

(c) *Members of the Board shall be chosen on the basis of their professional qualifications from among individuals who, at the time of their appointment, are employees (as defined under section 7322(1) of this title), except that not more than 2 individuals of the same political party may be appointed as members. Employees of the Civil Service Commission shall be ineligible to be appointed to or to hold office as members of the Board.*

(d) (1) *Members of the Board shall serve a term of 3 years, except that of the members first appointed—*

(A) the Chairman shall be appointed for a term of 3 years.

(B) one member, designated by the President, shall be appointed for a term of 2 years, and

(C) one member, designated by the President, shall be appointed for a term of 1 year.

An individual appointed to fill a vacancy occurring other than by the expiration of a term of office shall be appointed only for the unexpired term of the member such individual will succeed. Any vacancy occurring in the membership of the Board shall be filled in the same manner as in the case of the original appointment.

(2) *If an employee who was appointed as a member of the Board is separated from service as an employee he may not continue as a member of the Board after the 60-day period beginning on the date so separated.*

(e) *The Board shall meet at the call of the Chairman.*

(f) *All decisions of the Board with respect to the exercise of its duties and powers under the provisions of this subchapter shall be made by a majority vote of the Board.*

(g) *A member of the Board may not delegate to any person his vote nor, except as expressly provided by this subchapter, may any decision-making authority vested in the Board by the provisions of this subchapter be delegated to any member or person.*

(h) *The Board shall prepare and publish in the Federal Register written rules for the conduct of its activities, shall have an official seal which shall be judicially noticed, and shall have its office in or near the District of Columbia (but it may meet or exercise any of its powers anywhere in the United States).*

(i) *The Civil Service Commission shall provide such clerical and professional personnel, and administrative support, as the Chairman of the Board considers appropriate and necessary to carry out the Board's functions under this subchapter. Such personnel shall be responsible to the Chairman of the Board.*

(j) *The Administrator of the General Services Administration shall furnish the Board suitable office space appropriately furnished and equipped, as determined by the Administrator.*

(k) (1) *Members of the Board shall receive no additional pay on account of their service on the Board.*

(2) *Members shall be entitled to leave without loss of or reduction in pay, leave, or performance or efficiency rating during a period of absence while in the actual performance of duties vested in the Board.*

§ 7328. Investigation; procedures; hearing

(a) *The Civil Service Commission shall investigate reports and allegations of any activity prohibited by section 7323, 7324, or 7325 of this title. Any such investigation shall terminate not later than 90 days after the date of its commencement, except that such 90-day limitation may be extended upon the written approval of the Board for the period specified in such approval. If the Commission does not make the notification required under subsection (c) of this section before the close of the period for investigation, subsections (c) (2) and (3) and (d) of this section, and section 7329 of this title, shall not apply thereafter to the employee involved with respect to the activities under investigation.*

(b) *As a part of the investigation of the activities of an employee, the Commission shall provide such employee an opportunity to make a statement concerning the matters under investigation and to support such statement with any documents the employee wishes to submit. An employee of the Commission lawfully assigned to investigate a violation of this subchapter may administer an oath to a witness attending to testify or depose in the course of the investigation.*

(c) (1) *If it appears to the Commission after investigation that a violation of section 7323, 7324, or 7325 of this title has not occurred, it shall so notify the employee and the agency in which the employee is employed.*

(2) *Except as provided in paragraph (3) of this subsection, if it appears to the Commission after investigation that a violation of section 7323, 7324, or 7325 of this title has occurred, the Commission shall submit to the Board and serve upon the employee a written notice by certified mail (or if notice cannot be served in such manner, then by any method calculated to reasonably apprise the employee)—*

(A) *setting forth specifically and in detail the charges of alleged prohibited activity;*

(B) *advising the employee of the penalties provided under section 7329 of this title;*

(C) *specifying a period of not less than 30 days within which the employee may file with the Board a written answer to the charges in the manner prescribed by rules issued by the Board; and*

(D) *advising the employee that unless the employee answers the charges, in writing, within the time allowed therefor, the Board is authorized to treat such failure as an admission by the employee of the charges set forth in the notice and a waiver by the employee of the right to a hearing on the charges.*

(3) *If it appears to the Commission after investigation that a violation of section 7323, 7324, or 7325 of this title has been committed by—*

- (A) *the Vice President;*
- (B) *an employee appointed by the President by and with the advice and consent of the Senate;*
- (C) *an employee whose appointment is expressly required by statute to be made by the President;*
- (D) *the Mayor of the District of Columbia; or*
- (E) *the Chairman or a member of the Council of the District of Columbia, as established by the District of Columbia Self-Government and Governmental Reorganization Act;*

the Commission shall refer the case to the Attorney General for prosecution under title 18, and shall report the nature and details of the violation to the President and to the Congress.

(d) (1) *If a written answer is not filed within the time allowed therefor, the Board may, without further proceedings, issue its final decision and order.*

(2) *If an answer is filed within the time allowed, the charges shall be determined by the Board on the record after a hearing conducted by a hearing examiner appointed under section 3105 of this title, and, except as otherwise expressly provided under this subchapter, in accordance with the requirements of subchapter II of chapter 5 of this title, notwithstanding any exception therein for matters involving the tenure of any employee. The hearing shall be commenced within 30 days after the answer is filed with the Board and shall be conducted without unreasonable delay. As soon as practicable after the conclusion of the hearing, the examiner shall serve upon the Board, the Commission, and the employee such examiner's recommended decision with notice to the Commission and the employee of opportunity to file with the Board, within 30 days after the date of such notice, exceptions to the recommended decision. The Board shall issue its final decision and order in the proceeding no later than 60 days after the date the recommended decision is served. The employee shall not be removed from active duty status by reason of the alleged violation of this subchapter at any time before the effective date specified by the Board.*

(e) (1) *At any stage of a proceeding or investigation under this subchapter, the Board may, at the written request of the Commission or the employee, require by subpoena the attendance and testimony of witnesses and the production of documentary or other evidence relating to the proceeding or investigation at any designated place, from any place in the United States or any territory or possession thereof, the Commonwealth of Puerto Rico, or the District of Columbia. Any member of the Board may issue subpoenas and members of the Board and any hearing examiner authorized by the Board may administer oaths, examine witnesses, and receive evidence. In the case of contumacy or failure to obey a subpoena, the United States district court for the judicial district in which the person to whom the subpoena is addressed resides or is served may, upon application by the Board, issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to*

obey the order of the court may be punished by the court as a contempt thereof.

(2) The Board (or a member designated by the Board) may order the taking of depositions at any stage of a proceeding or investigation under this subchapter. Depositions shall be taken before an individual designated by the Board and having the power to administer oaths. Testimony shall be reduced to writing by or under the direction of the individual taking the deposition and shall be subscribed by the deponent.

(3) (A) After requesting in writing and obtaining the approval of the Attorney General, the Board may determine that an employee's attendance and testimony are necessary to the carrying out of the Board's functions under this subchapter. For purposes of the preceding sentence, if the Attorney General does not notify the Board in writing within 30 days after the date on which a request for such approval is made that the Board does not have his approval, then such approval is deemed to have been given. Such 30-day period shall be extended an additional 10 days of the attorney General submits in writing to the Board the reason for such extension.

(B) If the Board makes a determination under subparagraph (A) with respect to any employee, such employee may not be excused from attending and testifying or from producing documentary or other evidence in obedience to a subpoena of the Board on the ground that the testimony or evidence required of the employee may tend to incriminate the employee or subject the employee to a penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the employee is compelled to testify or produce evidence. No employee shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the employee is compelled under this paragraph, after having claimed the privilege against self-incrimination, to testify or produce evidence, nor shall testimony or evidence so compelled be used as evidence in any criminal proceeding against the employee in any court, except that no employee shall be exempt from prosecution and punishment for perjury committed in so testifying.

(f) An employee upon whom a penalty is imposed by an order of the Board under subsection (d) of this section may, within 30 days after the date on which the order was issued, institute an action for judicial review of the Board's order in the United States District Court for the District of Columbia or in the United States district court for the judicial district in which the employee resides or is employed. The institution of an action for judicial review shall not operate as a stay of the Board's order, unless the court specifically orders such stay. A copy of the summons and complaint shall be served as otherwise prescribed by law and, in addition, upon the Board which shall then certify and file with the court the record upon which the Board's order was based. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that the additional evidence may materially affect the result of the proceeding and that there were reasonable grounds for failure to adduce the evidence at the hearing conducted under subsection (d) (2) of this section, the court may direct that the additional evidence be taken before the Board in the manner and on

the terms and conditions fixed by the court. The Board may modify its findings of fact or order, in the light of the additional evidence, and shall file with the court such modified findings or order. The Board's findings of fact, if supported by substantial evidence, shall be conclusive. The court shall affirm the Board's order if it determines that it is 'in accordance with law. If the court determines that the order is not in accordance with law—

(1) it shall remand the proceeding to the Board with directions either to enter an order determined by the court to be lawful or to take such further proceedings as, in the opinion of the court, are required; and

(2) it may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred by the employee.

(g) The Commission or the Board, in its discretion, may proceed with any investigation or proceeding instituted under this subchapter notwithstanding that the Commission or the head of an employing agency or department has reported the alleged violation to the Attorney General as required by section 535 of title 28.

§ 7329. Penalties

(a) Subject to and in accordance with section 7328 of this title, an employee who is found to have violated any provision of section 7323, 7324, or 7325 of this title shall, upon a final order of the Board, be—

(1) removed from such employee's pension, in which event that employee may not thereafter hold any position (other than an elected position) as an employee (as defined in section 7322(1) of this title) for such period as the Board may prescribe;

(2) suspended without pay from such employee's position for such period as the Board may prescribe; or

(3) disciplined in such other manner as the Board shall deem appropriate.

(b) The Board shall notify the Commission, the employee, and the employing agency of any penalty it has imposed under this section. The employing agency shall certify to the Board the measures undertaken to implement the penalty.

§ 7330. Educational program; reports

(a) The Commission shall establish and conduct a continuing program to inform all employees of their rights of political participation and to educate employees with respect to those political activities which are prohibited. The Commission shall inform each employee individually in writing, at least once each calendar year, of such employee's political rights and of the restrictions under this subchapter. The Commission may determine, for each State, the most appropriate date for providing information required by this subsection. Such information, however, shall be provided to employees employed or holding office in any State not later than 60 days before the earliest primary or general election for State or Federal elective office held in such State.

(b) On or before March 30 of each calendar year, the Commission shall submit a report covering the preceding calendar year to the Speaker of the House of Representatives and the President pro tem-

pore of the Senate for referral to the appropriate committees of the Congress. The report shall include—

(1) the number of investigations conducted under section 7328 of this title and the results of such investigations;

(2) the name and position or title of each individual involved, and the funds expended by the Commission, in carrying out the program required under subsection (a) of this section; and

(3) an evaluation which describes—

(A) the manner in which such program is being carried out; and

(B) the effectiveness of such program in carrying out the purposes set forth in subsection (a) of this section.

§ 7331. Regulations

The Civil Service Commission shall prescribe such rules and regulations as may be necessary to carry out its responsibilities under this subchapter. However, no regulation or rule of the Commission or any amendment thereto shall take effect unless—

(1) the Commission transmits such rule, regulation, or amendments to the Congress; and

(2) neither House of Congress has disapproved such rule, regulation, or amendment within 30 legislative days from the date of transmittal to the Congress.

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Chapter 83—Retirement

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Subchapter III—Civil Service Retirement

* * * * *

§ 8332. Creditable service

(a) * * *

* * * * *

(k) (1) An employee who enters on leave without pay granted under section 7326(a) of this title, or who enters on approved leave without pay to serve as a full-time officer or employee of an organization composed primarily of employees as defined by section 8331(1) of this title, which 60 days after entering on that leave without pay, may file with his employing agency an election to receive full retirement credit for his periods of that leave without pay and arrange to pay currently into the Fund, through his employing agency, amounts equal to the retirement deductions and agency contributions that would be applicable if he were in pay status. If the election and all payments provided by this paragraph are not made, the employee may not receive credit for the periods of leave without pay occurring after July 17, 1966, notwithstanding the [second] last sentence of subsection (f) of this section. For the purpose of the preceding sentence, "employee" includes an employee who was on approved leave without pay and serving as a full-time officer or employee of such an organization on July 18, 1966, and who filed a similar election before September 17, 1966.

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Chapter 87—Life Insurance

* * * * *

§ 8706. Termination of insurance

(a) * * *

* * * * *

(e) Notwithstanding subsections (a)–(c) of this section, an employee who enters on *leave without pay granted under section 7326(a) of this title*, or who enters on approved leave without pay to serve as a full-time officer or employee of an organization composed primarily of employees as defined by section 8701(a) of this title, within 60 days after entering on that leave without pay, may elect to continue his insurance and arrange to pay currently into the Employees' Life Insurance Fund, through his employing agency, both employee and agency contributions from the beginning of leave without pay. The employing agency shall forward the premium payments to the Fund. If the employee does not so elect, his insurance will continue during nonpay status and stop as provided by subsection (a) of this section.

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Chapter 89—Health Insurance

* * * * *

§ 8906. Contributions

(a) * * *

* * * * *

(e)(1) An employee enrolled in a health benefits plan under this chapter who is placed in a leave without pay status may have his coverage and the coverage of members of his family continued under the plan for not to exceed 1 year under regulations prescribed by the Commission. The regulations may provide for the waiving of contributions by the employee and the Government.

(2) An employee who enters on *leave without pay granted under section 7326(a) of this title*, or who enters on approved leave without pay to serve as a full-time officer or employee of an organization composed primarily of employees as defined by section 8901 of this title, within 60 days after entering on that leave without pay, may file with his employing agency an election to continue his health benefits enrollment and arrange to pay currently into the Employees Health Benefits Fund, through his employing agency, both employee and agency contributions from the beginning of leave without pay. The employing agency shall forward the enrollment charges so paid to the Fund. If the employee does not so elect, his enrollment will continue during nonpay status and end as provided by paragraph (1) of this subsection and implementing regulations.

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TITLE 18, UNITED STATES CODE

* * * * *

Chapter 29.—Elections and Political Activities

* * * * *

"§614. Extortion of political contributions from Federal personnel."

* * * * *

§ 602. Solicitation of political contributions

Whoever, being a Senator or Representative in, or Delegate or Resident Commissioner to, or a candidate for Congress, or individual elected as, Senator, Representative, Delegate, or Resident Commissioner, or an officer or employee of the United States or any department or agency thereof, or a person receiving any salary or compensation for services from money derived from the Treasury of the United States, directly or indirectly solicits, receives, or is in any manner concerned in soliciting or receiving, any assessment, subscription, or contribution for any political purpose whatever, from any other such officer, employee, or person, shall be fined not more than \$5,000 or imprisoned not more than three years or both. *This section does not apply to any activity of an employee, as defined in section 7322(1) of title 5, unless such activity is prohibited by section 7324 of that title.*

§ 607. Making political contributions

Whoever, being an officer, clerk, or other person in the service of the United States or any department or agency thereof, directly or indirectly gives or hands over to any other officer, clerk, or person in the service of the United States, or to any Senator or Member of or Delegate to Congress, or Resident Commissioner, any money or other valuable thing on account of or to be applied to the promotion of any political object, shall be fined not more than \$5,000 or imprisoned not more than three years, or both. *This section does not apply to any activity of an employee, as defined in section 7322(1) of title 5, unless such activity is prohibited by section 7324 of that title.*

"§ 614. Extortion of political contributions from Federal personnel"

Whoever, by the commission of or threat of physical violence to, or economic sanction against, any person, obtains, or endeavors to obtain, from an officer or employee of the United States or of any department or agency thereof, or from a person receiving any salary or compensation for services from money derived from the Treasury of the United States, any contribution for the promotion of a political object, shall be imprisoned not less than two nor more than three years, or fined not more than \$5,000, or both.

SECTION 6 OF THE VOTING RIGHTS ACT OF 1965

SEC. 6. Whenever (a) a court has authorized the appointment of examiners pursuant to the provisions of section 3(a), or (b) unless a declaratory judgment has been rendered under section 4(a), the Attorney General certifies with respect to any political subdivision

named in, or included within the scope of, determinations made under section 4(b) that (1) he has received complaints in writing from twenty or more residents of such political subdivision alleging that they have been denied the right to vote under color of law on account of race or color, and that he believes such complaints to be meritorious, or (2) that in his judgment (considering, among other factors, whether the ratio of nonwhite persons to white persons registered to vote within such subdivision appears to him to be reasonably attributable to violations of the fifteenth amendment or whether substantial evidence exists that bona fide efforts are being made within such subdivision to comply with the fifteenth amendment), the appointment of examiners is otherwise necessary to enforce the guarantees of the fifteenth amendment, the Civil Service Commission shall appoint as many examiners for such subdivisions as it may deem appropriate to prepare and maintain lists of persons eligible to vote in Federal, State, and local elections. Such examiners, hearing officers provided for in section 9(a), and other persons deemed necessary by the Commission to carry out the provisions and purposes of this Act shall be appointed, compensated, and separated without regard to the provisions of any statute administered by the Civil Service Commission, and service under this Act shall not be considered employment for the purposes of any statute administered by the Civil Service Commission, except [the provisions of section 9 of the Act of August 2, 1939, as amended (5 U.S.C. 188i), prohibiting partisan political activity] *the provisions of subchapter III of chapter 73 of title 5, United States Code, relating to political activities: Provided.* That the Commission is authorized, after consulting the head of the appropriate department or agency, to designate suitable persons in the official service of the United States, with their consent, to serve in these positions. Examiners and hearing officers shall have the power to administer oath.

DISTRICT OF COLUMBIA PUBLIC EDUCATION ACT

* * * * *

TITLE I—FEDERAL CITY COLLEGE

* * * * *

SEC. 103. (a) The Board is vested with the following powers and duties:

- (1) To develop detailed plans for and to establish, organize, and operate in the District of Columbia the Federal City College.
- (2) To establish policies, standards, and requirements governing admission, programs, graduation (including the award of degrees) and general administration of the Federal City College.
- (3) To appoint and compensate, without regard to the civil service laws or chapter 51 and subchapter III of chapter 53 of title 5, United States Code, a president for the Federal City College.
- (4) To employ and compensate such officers as it determines necessary for the Federal City College, and such educational employees for the Federal City College as the president thereof

may recommend in writing. Such officers and educational employees may be employed and compensated without regard to—

- (A) the civil service laws,
- (B) chapter 51 and subchapter III of chapter 53 of title 5, United States Code (relating to classification of positions in Government service),
- (C) section 6301 through 6305 and 6307 through 6311 of title 5, United States Code (relating to annual and sick leave for Federal employees),
- (D) chapter 15 and [sections 7324 through 7327] section 7325 of title 5, United States Code (relating to political activities of Government employees),
- (E) section 3323 and subchapter III of chapter 81 of title 5, United States Code (relating to civil service retirement), and
- (F) sections 3326, 3501, 3502, 5531 through 5533, and 6303 of title 5, United States Code (relating to dual pay and dual employment),

but the employment and compensation of such officers and educational employees shall be subject to—

- (i) sections 7902, 8101 through 8138, and 8145 through 8150 of title 5, United States Code, and sections 292 and 1920 through 1922 of title 18, United States Code (relating to compensation for work injuries).
- (ii) chapter 87 of title 5, United States Code (relating to Government employees group life insurance).
- (iii) chapter 89 of title 5, United States Code (relating to health insurance for Government employees), and
- (iv) section 1302, 2108, 3305, 3306, 3308 through 3320, 3351, 3363, 3364, 3501 through 3504, 7511, 7512, and 7701 of title 5, United States Code (relating to veteran's preference).

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TITLE II—WASHINGTON TECHNICAL INSTITUTE

* * * * *

SEC. 203. (a) The Board is hereby vested with the following powers and duties:

- (1) To develop detailed plans for and to establish, organize, and operate in the District of Columbia the Washington Technical Institute.
- (2) To establish policies, standards, and requirements governing admission, programs, graduation (including the award of degrees) and general administration of the Washington Technical Institute.
- (3) To appoint and compensate, without regard to the civil service laws or chapter 51 and subchapter III of chapter 53 of title 5, United States Code, a president for the Washington Technical Institute.
- (4) To employ and compensate such officers as it determines necessary for the Washington Technical Institute, and such educational employees for the Washington Technical Institute as the

president thereof may recommend in writing. Such officers and educational employees may be employed and compensated without regard to—

(A) the civil service laws,

(B) chapter 51 and subchapter III of chapter 53 of title 5, United States Code (relating to classification of positions in Government service),

(C) sections 6301 through 6305 and 6307 through 6311 of title 5, United States Code (relating to annual and sick leave for Federal employees),

(D) chapter 15 and [sections 7324 through 7327] *section 7325* of title 5, United States Code (relating to political activities of Government employees),

(E) section 3323 and subchapter III of chapter 81 of title 5, United States Code (relating to civil service retirement), and

(F) sections 3326, 3501, 3502, 5531 through 5533, and 6303 of title 5, United States Code, relating to dual pay and dual employment),

but the employment and the compensation of such officers and educational employees shall be subject to—

(i) sections 7902, 8101 through 8138, and 8145 through 8150 of title 5, United States Code, and sections 292 and 1920 through 1922 of title 18, United States Code (relating to compensation for work injuries),

(ii) chapter 87 of title 5, United States Code (relating to Government employees group life insurance),

(iii) chapter 89 of title 5, United States Code (relating to health insurance for Government employees), and

(iv) sections 1302, 2108, 3305, 3306, 3308 through 3320, 3351, 3363, 3364, 3501 through 3504, 7511, 7512, and 7701 of title 5, United States Code (relating to veteran's preference).

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MINORITY VIEWS ON H.R. 8617

The legislation is labeled by its proponents as a measure to "restore" the "rights" of Federal civilian and Postal Service employees to participate in this nation's "political processes."

What it would in fact do, however, is to open up the entire Federal government to partisan politics by Federal employees and concentrate excessive political power in the hands of their leaders. It would cripple and emasculate the Hatch Act—the cornerstone of the merit system—which has served this nation so well in banning partisan politics from the merit system and in shielding Civil Service workers from the pressures and threats of politicians.

H.R. 8617 is a giant step backward. If enacted, it will have a most corrosive and erosive effect for it will inevitably lead to political favoritism. Our present merit system will then return to the spoils system of the pre-Hatch Act period.

At a time when the American people already hold their government in such low esteem, any action by the Congress which would further lower the people's confidence in that government would be a grave disservice to the nation. We must strive to preserve the nonpartisan integrity and impartiality of the public service and its employees. H.R. 8617 would do just the opposite and should be defeated.

WHY THE HATCH ACT WAS ENACTED

The Hatch Act was enacted into law in 1939 amidst a climate of political corruption in the Federal workforce. Under the New Deal, the Works Progress Administration (WPA) funded wholly or partially over 3 million public works jobs in areas of high unemployment. Public indignation grew over reports of widespread financial solicitation by Democratic Party officials from WPA workers as a condition of continued WPA employment, salary advancement, and favorable job assignment.

As a result of these allegations of political corruption, the Senate created a special investigating committee headed by Senator Morris Sheppard of Texas. The Sheppard Committee's report of January 3, 1939, contained numerous documented cases of political coercion that occurred in 10 states. Committee investigators obtained affidavits from WPA workers which showed extensive solicitation of financial contributions from WPA workers by WPA supervisors closely associated with local political organizations which, in turn, were affiliated with the National Democratic Party.

Continued employment on WPA projects, as well as promotions and favorable work assignments, were often contingent upon direct financial contributions to local party organizations or the purchase of tickets to various fund-raising functions.

In Kentucky, for example, the committee found that \$70,000 had been raised for the Governor's campaign from State employees whose

salaries had been partly or wholly derived from funds paid by the U.S. Treasury, and that \$24,000 had been raised for a Senator's campaign from WPA employees and from other State employees receiving Federal money.

The committee found particular abuses by administrative personnel in the WPA in Kentucky; specifically, they had made a systematic canvass of certified WPA workers, that workers had been hired and fired on the basis of political affiliation, and that WPA workers had been solicited for political contributions.

Based on these findings, the Sheppard Committee recommended that Congress pass legislation to prohibit the political coercion of all Federal employees. The spectacular evidence of patronage politics prompted Congress to respond quickly and the Hatch Act was enacted in the same year.

HATCH ACT ASSURES IMPARTIAL GOVERNMENTAL

The law was designed to protect Federal employees from being coerced to participate in partisan political activity such as fund raising, campaigning, and soliciting votes. Further, the statute made it illegal to use "official authority or influence to coerce the political action" of Federal employees. Federal employees were insulated from becoming pawns of any political party, thus insuring that the laws of the land would be administered impartially by employees who owed their appointments and tenure in the Federal Government only to the merit system and not to any partisan political party.

This was the purpose and intent of the law. It has served both employees and the public well.

HATCH ACT IS MORE NEEDED TODAY

Now, 36 years later, proponents of H.R. 8617 seek to remove these time-tested protections of Federal employees. We in the Congress are being asked to ignore the sordid political past which prompted the enactment of the original law.

This is a mistake. The proponents of this wholesale change in the law argue that times have changed since 1939, that employees are more sophisticated, and, therefore, repeal of the important Hatch Act provisions is necessary.

Times have changed—but let us examine to what extent they have changed.

For example, it is estimated that in 1939, there were 920,000 Federal employees as opposed to 2.8 million today; the total budget in 1940 was \$9.5 billion as opposed to \$324 billion in 1975; public assistance—welfare and government payment to individuals—totaled \$1.5 billion in 1940 while the estimate in 1975 is close to \$147 billion; and the average salary of a Federal employee in 1939 was \$1,871 as opposed to \$14,480 today.

Indeed, times have changed." The Federal government is vastly larger than it was in 1939 when the Hatch Act became law—it employs three times more workers and has a budget 34 times larger. Accordingly, the potential for abuses in the Civil Service merit system is far greater today than it was 36 years ago.

The question is, has human behavior changed to the extent that employees are no longer vulnerable to coercion—subtle or otherwise—from ambitious partisan political employees who hold important positions in government? We do not think so. In fact, the Hatch Act is more necessary today than when it was first enacted into law.

LEGISLATION WILL NOT STOP COERCION

If Federal employees have become more sophisticated since the 1930's, they have also become more cynical. In 1967, a full 25 percent flatly told the Survey Research Center of the University of Michigan—an impartial, widely respected professional organization—that they would not report the illegal activities of coworkers or supervisors.

In an increasingly sophisticated and cynical post-Watergate atmosphere, it becomes more and more unlikely that such subtle political activities as indirect coercion of employees will be reported.

Though a few union leaders boasted in House subcommittee hearings this year that their organizations could combat coercion in the public sector as successfully as it has been done in the private sector, subtle coercion is extremely difficult to prove. It is unlikely that even the most strenuous of union efforts would curb indirect coercion—the subtle pressure that any Federal employee would inevitably feel were his supervisor a politician. Furthermore, unions would not be able to assist the hundreds of thousands of Federal employees who are not union members. Thus, Federal employees, stripped of their protection, will be “sitting ducks.”

RANK AND FILE OPPOSE CHANGE

The impetus for this bill does not come from Federal employees themselves, who will lose most by the passage of this bill.

Given a choice between the Hatch Act and H.R. 8617, employees would prefer the Hatch Act. Congressmen representing the nation's second and third largest civil servant constituencies report that their own surveys and mail show an overwhelming proportion of the rank and file Civil Service employees do not want the bill. Of 20,000 individuals who responded to a questionnaire which Representative Joseph L. Fisher (D.-Va.) mailed to his Northern Virginia constituents (including one-third to 40 percent who were civil servants), 59 percent expressed opposition to any change in the Hatch Act. His mail indicated that Civil Service employees who wanted the status quo outnumbered others eight or ten to one.

Representative Gilbert Gude (R.-Md.) told the Senate Post Office and Civil Service Committee: “I think his (Congressman Fisher's) poll clearly shows what I felt was the case in my district and what I think is the case generally with Civil Service employees across the country.”

Still another House Member, Representative Elizabeth Holtzman (D.-N.Y.), said the results of a questionnaire she sent to her constituents showed the vote was two to one against weakening the Hatch Act. “I think that my constituents accurately perceive the need for continued protection to the public and the Federal Civil Service afforded by much of the Hatch Act,” she commented. Her incisive

remarks on H.R. 8617 (*Congressional Record*, November 18, 1975, Pages H11390-91) underscore the dangers in partisan political activities if engaged in by Federal employees.

Clayton Jones, President of the Federal Executive Institute Alumni Association, reporting on the results of his organization's questionnaire, said that out of 3,000 career Civil Service employees who were polled by mail, only two individuals expressed support for legislation to change the Hatch Act.

In its 1967 study, the Survey Research Center of the University of Michigan found strong sentiment among Federal employees for keeping the Hatch Act unchanged. In surveying the attitudes of Federal employees toward the Hatch Act, 14 categories of responses were allowed. The category which ranked number one with the highest response was: "The Hatch Act should remain as is; do not favor changes." Obviously, Civil Service employees do not want to throw out the present Hatch Act.

Joseph Young, the veteran columnist of the *Washington Star* who has covered the "government beat" for more than 25 years, made this observation:

Federal and postal employee union leaders are all in favor of overhauling the law restricting the political activities of government workers, but it's doubtful that most employees are.

The unions favor overhaul because it would increase their clout with Congress and the political party in power in the White House.

But it would mean the end of the merit system as we know it today.

The attacks on the merit system that occurred during the Nixon administration would be mere child's play compared to what would happen if the Hatch Act were radically changed.

Nathan T. Wolkomir, President of the largest independent union of career employees—the widely respected National Federation of Federal Employees—said:

There is no question in my mind that this is a further attempt by the AFL-CIO to have terrific political impact on the Hill.

And John McCart, head of the AFL-CIO's public-employee section, agrees:

I suppose that to the extent we make our people more aware of the political process, you could say that we could acquire more political clout. But what's wrong with that? Our union's whole history is related to politics.

And so, if the AFL-CIO has its way, union will soon be engaged in exacting political favors from union members in the Federal service.

Our Nation's history, though, shows that "politics" should have no place in the impartial administration of Federal laws—no place in the Civil Service—regardless of the AFL-CIO desire to open the public service to unrestricted political activity.

Employees do not want this or any other change in the Hatch Act. Mr. Wolkomir testified that his union, the NFFE, conducted a poll

of its members which showed 89 percent expressing strong support for continuing the Act "as is." In its 1974 convention, NFFE unanimously adopted a resolution "that the NFFE continue to vigorously oppose efforts to weaken the protection provided by the Hatch Act.

EVEN THE PRESENT PROVISIONS ARE VIOLATED

If the incentive to engage in abuses of the merit system were sufficiently great, even the most stringent enforcement mechanism conceivably would not deter such abuses. Even in the absence of powerful incentives, some abuses of the merit system appear inevitable.

More than a few witnesses testifying before the House panel considered this legislation, complained of discrimination in appointments and promotions, discrimination against minorities, and favoritism toward members of fraternal organizations. Since these witnesses were for the most part responsible individuals, elected to posts of some importance, their statements cannot be dismissed as puffery or paranoia. The conclusion that must be drawn is that there is some abuse of the merit system.

Even the Hatch Act, with its sweeping proscriptions against political activity and its stiff mandatory penalties, is persistently violated.

A Hatch Act violation which made the front pages in 1971 was the case of six officials of the General Services Administration who were charged with soliciting subordinates to buy tickets to a "Salute to the President Dinner." The Civil Service Commission found the six, all Civil Service employees, had violated the Hatch Act.

The Survey Research Center found that at least 1.5 percent of all Federal employees have been asked by their supervisors to contribute money to political campaigns, while another 1.2 percent have been requested to participate in political activities in violation of the law.

Some would claim this evidence demonstrates that the Hatch Act prohibitions against partisan politicking are not working and should be repealed. Little thought is needed to see that repeal would only worsen the situation. Repeal the the prohibitions and abuse becomes more profitable; if it is more profitable, more abuses will follow.

FEDERAL WORKERS NOT "SECOND-CLASS CITIZENS"

Proponents of H.R. 8617 have advanced the specious claim that the Hatch Act reduces Federal employees to the status of "second-class citizens," depriving them of their First Amendment rights of free speech and free association.

The right to participate in political activities is not, and never has been, absolute. In *U.S. Civil Service Commission v. National Association of Letter Carriers*, the Supreme Court recently sustained the constitutionality of that provision in title 5, United States Code, which prohibits Federal employees from taking an active part in political management or in political campaigns, the very provision H.R. 8617 would repeal.

The Court held that:

A major thesis of the Hatch Act is that to serve this great end of government—the impartial execution of the laws—it is essential that Federal employees not, for example, take formal

positions in political parties, not undertake to play substantial roles in partisan political campaigns and not run for office on partisan political tickets. Forbidding activities like these will reduce the hazards to fair and effective government.

There is another consideration in this judgment: It is not only important that the government and its employees in fact avoid practicing political justice, but it is also critical that they appear to the public to be avoiding it, if confidence in the system of representative government is not to be eroded to a disastrous extent.

The Supreme Court has repeatedly held that the interests of society must be balanced against the interests of the individual. In this case, it is reasonable, and the lesson of history shows it is necessary, to curtail the political activities of Federal employees in the interests of society and also in the interests of employees. The Fisher poll shows that Federal employees know this. Impartial administration of the law without regard to personal convictions or political affiliations is required for a fair and efficient government.

Even if intensive involvement in politics does not taint an employee's administration of the law (an unlikely situation), it would certainly taint the public's perception of government affairs. More than a few citizens, one suspects, would be less willing to comply voluntarily with Internal Revenue Service regulations, were the Regional Director of the Revenue Service also the manager of a governor's campaign.

Moreover, the interests of the vast majority of Federal employees, those with no burning desire to become involved in partisan affairs, seem to require that restraints be placed upon the ambitions of their more politically inclined co-workers.

POLITICAL RIGHTS OF FEDERAL EMPLOYEES

Nor are the First Amendment rights of Federal employees impaired. While there are prohibited activities under the Hatch Act, there are at least as many permissible activities. An employee may register and vote in any election; express his opinion privately and publicly on political subjects and candidates; display a political picture, sticker, badge, or button; participate in the nonpartisan activities of a civic, community, social, labor, or professional organization; be a member of a political party and participate in its activities to the extent consistent with the law; attend a political convention, rally, fund-raising function, or other political gathering sign a petition as an individual; be politically active in connection with a question not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance or any other question or issue of a similar character; and serve as an election judge or clerk, or in a similar position to perform nonpartisan duties as prescribed by State or local law.

In addition, the Civil Service Commission has determined that in certain municipalities in Maryland and Virginia in the vicinity of of the District of Columbia, or a municipality in which the majority of voters are employed by the Government of the United States, it is in the domestic interest of employees for them to participate in local

elections. In these designated municipalities, an employee is permitted to run in a partisan election if he runs as an independent candidate.

Employees who reside in areas which do not qualify under the criteria cited above, may also run for public office and engage in political activity, but only in a nonpartisan election.

The Hatch Act does not deny a citizen his right to manage a political campaign or to run for partisan office. Nor does it deny the qualified citizen the privilege of a secure, well-paying post in the Civil Service. The act merely recognizes that one cannot administer the law impartially while advocating a partisan platform, that one has no inherent right under the Constitution to be a Federal employee and a political activist at the same time.

Nathan Wolkowicz, President of the National Federation of Federal Employees, has capsuled the issue more bluntly:

Claims that the Hatch Act makes "second-class citizens" of Federal employees is just so much eyewash. Federal employees are not denied reasonable and appropriate participation in the political process. Oddly, many of those who moan most loudly about this moth-eaten cliché fail to exercise the basic and most elementary action of a citizen, namely, to register and vote.

Robert E. Hampton, Chairman of the U.S. Civil Service Commission, testified before the Senate Post Office and Civil Service Committee that a record number of people in recent years have expressed interest in Federal employment and most of them were well aware of the Hatch Act restrictions on their political activity if they accepted a Federal job. Evidently, these individuals don't think the Hatch Act makes them "second-class citizens," Chairman Hampton said, and the political restrictions are not a deterrent to their seeking Federal employment.

POSTAL WORKER VERSUS SEARS ROEBUCK EMPLOYEE

The question has been raised as to how a Postal employee differs from an employee of Sears Roebuck. Why should the political activity of the Postal employee be restricted while that of the Sears employee is not?

There is a major difference between these two types of employees. Government employees, unlike private enterprise employees, are prominently identified with public programs and the impartial implementation of legislation which may have been bitterly contested by partisan forces. Briefly put, the Postal employee (or any Government employee) is a representative of the U.S. Government, not of a political party. His work is of major importance to all citizens.

The Postal employee in particular is the one government employee with whom many people in our country come into contact every day. He is the one who delivers the Social Security check; he is the one who delivers bill payments to small businesses with a critical cash-flow; he is the one who delivers the advertisements for one-day-only sales; he is the one who delivers the political campaign advertisements for parties and candidates. In short, he is a person who is intimately aware of a postal patron's interests and business.

He could, if partisan considerations were involved, engage in a form of coercion by "accidentally" delaying delivery of mail in a way which would benefit his candidate. For example, a political brochure "accidentally" delivered on November 5 is of no value to the candidate who mailed it. And late delivery of a Social Security check can cause real hardship for those dependent upon its prompt arrival.

As set forth above, such actions would have a serious effect not only on the efficient delivery of the mail but also on the public's perception of the manner in which government business is conducted. The public servant would seem to be more an employee of a political party.

Indeed, a Philadelphia official of the National Association of Letter Carriers whose members, the official points out, deliver mail to every home in America, has been quoted as saying:

Our people have the ability to meet and contact people that other people don't have. We could be effective if we were unshackled. We do some talking right now, but we're not supposed to.

The Sears employee, on the other hand, is an employee of a private, competitive business. The public does not pay his salary, does not expect him to be impartial, does not look to him to execute public laws and programs, and does not depend on him for the many basic services which are now provided by the government. A dissatisfied Sears customer can always turn to another store.

In regard to government services, such as the Postal Service, however, the "customer" does not have a similar option. It is, therefore, inappropriate to compare a Postal employee with an employee of Sears Roebuck, or to compare any government employee with an employee of a private, competitive business.

COERCION DIFFERS FROM DISCRIMINATION

Enforcement of the Hatch Act anti-coercion provisions is an extremely difficult task and cannot in any way be compared with the enforcement of antidiscrimination laws.

Racism is ugly, a social toxin, universally condemned. Political participation is a virtue, a social tonic, as prized by many Americans as racism is abhorred. Discrimination may be documented with the statistician's tools, eradicated with a sweeping directive. Coercion can be established only after exhaustive investigation and painstaking cross-examination, and must be eradicated case by case.

Too, coercion is a far more subtle thing. A vague remark, the wave of an arm, effusive praise, or its sudden absence, is sufficient to influence the activity of a Federal employee properly concerned with his own future. And who can fault him? He is aware that his supervisor, when making an appointment or transfer, may choose one of three equally qualified candidates. Under these circumstances, merit system abuse is almost impossible to establish. As one witness said: Substantiating charges of subtle coercion is "like trying to put your finger on a greasy marble."

Who can demonstrate that one was selected because he contributed generously to a campaign the supervisor managed? That another was passed over because he had once sported a button touting the opposi-

tion? And if one candidate for a promotion tells his supervisor, when no one else can hear, that the increased salary will make it much easier for him to pitch in come election time, who will ever know?

Fifty-two percent of Federal employees interviewed by the Survey Research Center felt that "promotion decisions and job assignments would change if Federal employees were allowed to be more active in politics." Few who feel this way would dare attend a fund-raiser for the opposition party, if their supervisor happened to be the State party chairman. And many who ordinarily would not even contribute to a political party might seriously consider putting up posters or driving people to the polls, just to give their boss a hand.

And what about the employee whose union holds one view, and pressures him to actively support it, while his supervisor holds a different view?

Ironically, enforcement of the law merely compounds the problem; if a supervisor who had abused the merit system was not successfully prosecuted, every employee who had ever entertained the notion that partisan activity counts would then be convinced that his darkest suspicions had been correct all along.

PUBLIC PERCEPTION OF IMPARTIAL GOVERNMENT

Even if intensive involvement in politics does not taint a public employee's administration of the law, it would certainly taint the public's perception of government affairs.

Consider the public's perception of government affairs if the following Federal employees were engaged in partisan political activity. The illustrations were cited in the Senate Post Office and Civil Service Committee hearings by Carl F. Goodman, General Counsel of the Civil Service Commission:

A "superior" is known to be actively campaigning for candidate X. One of his subordinates, who is generally known to be personally close to the superior, or who is known to be the superior's "right-hand-man," but is actually not a superior to the employees, approaches other employees in front of the building, or in a parking lot, or at their residences, (H.R. 8617 prohibits fund solicitation in Federal buildings) and solicits contributions for candidate X.

The solicited employees must decide if it is expedient for them to contribute, being aware of the possibility that the superior may learn whether or not a contribution was made.

They would also be aware that it would be extremely difficult, if not for all practical purposes impossible, to prove that any particular employee is promoted or passed over for promotion because he made a political contribution, or failed to.

There is no evidence to indicate that the superior instructed or even suggested to the subordinate that contributions should be solicited * * * unlikely that such evidence could be obtained.

* * * * *

An employee is aware of a vacancy which would be a promotion for him. He also is aware that the person who will

make the selection is actively supporting particular candidate. Add to that the fact that another employee who will be in competition for the vacancy is also working actively on behalf of the same candidate.

Our first employee must now make a decision with respect to his own activity. Can he really afford not to also campaign for that candidate? Or can he afford to exercise his "right" of choice by actively campaigning for the opposition?

What is at play here is internal coercion—the employee is caught between the proverbial rock and the hard place.

Today he need not be concerned about making this no-win choice—he is hatched; he is protected.

* * * * *

How about the employee engaged in political management who suddenly finds that the opposition candidate is his boss; or worse yet that the candidate he just successfully helped defeat now is boss and is responsible for his promotions, work assignments, leave, etc.?

Are all political activists of such pure heart that they can and will completely overlook the fact that subordinates deprived them of elective offices they worked so hard to obtain?

Still more illustrations can be offered:

If the General Counsel of the Civil Service Commission were known to be an active campaigner and fund-raiser for a political party, who would believe his report as to that party's abuse of the merit system?

What would be the public reaction to an Internal Revenue Service agent who investigates tax fraud, and in the same community solicits campaign funds so he or a friend can run for office?

The Commissioner of the Internal Revenue Service in testimony before the Senate Committee, stated:

I think the American people would quickly lose confidence in the integrity of an internal revenue system which permitted its employees to be avid political partisans one day and expect them to be perceived the next as wholly non-partisan by both political friends and foes.

The list could go on endlessly: the Federal Prosecutor handling fraud cases; the farm agent distributing cash assistance; the Small Business Administration employees approving or rejecting a loan; the contracting officer and the grant officer whose day-to-day decisions are so very important.

In the Executive Branch as a whole, the public's perception of the equitable, impartial, non-partisan integrity of the system is of major importance.

THE LESSON FROM WATERGATE

Representative Elizabeth Holtzman has emphasized,

If there is one lesson we should have learned from Watergate, it is that we must strive to reduce, rather than increase,

political influence in the Federal law enforcement and investigative agencies. This bill would, instead, authorize and invite the politicizing of the Justice Department, FBI, U.S. Attorney's Offices and Internal Revenue Service, as well as the CIA, National Security Agency and Defense Intelligence Agency. The dangers are two-fold: that law enforcement and investigative powers will be used to serve political ends, and that law enforcement and investigative offices, which should be wholly merit operations, will instead return to the spoils system. In addition, the administration of justice must not only be free of political influence in fact; it must be perceived as fair and impartial as well.

It is significant that in its final report in June, 1974, the Senate Select Committee on Presidential Campaign Activities—the Senate Watergate Committee—recommended that Congress amend the Hatch Act to place all Justice Department officials—including the Attorney General—under its purview. At present, certain Justice Department officials are exempt from Hatch Act coverage. The Watergate committee, however, stated it believes that all Justice Department officials should administer the nation's laws totally removed from all political considerations.

The Watergate Committee's recommendation to extend the Hatch Act to all Justice Department employees, including the Attorney General, is also in the report of the Watergate Special Prosecution Force issued in October 1975. Deputy Attorney General Harold R. Tyler, Jr., said such an action would add "a certain amount of public confidence."

FALLACIOUS COMPARISON WITH OTHER COUNTRIES

Proponents of H.R. 8617 assert that the United States is the only free world country to so severely restrict the political activities of its government employees.

But compared to Japan, which prohibits all forms of political activity and political expression, with the single exception of the vote, the United States is a paragon of liberalism and tolerance. As one might expect, for the past 30 years Japan has benefited from a strictly professional and scrupulously nonpartisan Civil Service, while the United States has had more than its share of blemishes, particularly at the State and local level.

We do not think the United States should restrict the political activities of its employees to the same degree as Japan. We are two different nations, with different governments, histories, cultures, customs, and legal codes.

If the Civil Service laws of Japan should not serve as a model for the United States, neither should those of Britain, Germany, Canada, France, or any other nation. Aside from the obvious historical differences, our system of checks and balances is fundamentally different from other countries.

Though the differences between the United States and other free world nations are many, the most significant, for our purposes, is this: for every administrative office filled by a political appointee in

other countries, dozens are filled with appointees in the United States. This is no flaw in our system of government, but a necessity. The will of the nation, as interpreted by the Chief Executive, could not otherwise be translated into action. But political appointees can undermine the administration of the law as well as promote it, if the partisan pressures they inevitably exert result in the politicization of the Civil Service. No other nation possesses Civil Service is susceptible to this risk.

MAKING THE HATCH ACT CLEARER

Some critics claim that the Hatch Act, which incorporates into statute over 3,000 administrative decisions, is vague and overbroad. The answer to this criticism is that the Federal employee who is determined to participate in politics to the extent permitted by law does not have to spend his weekends in the darkened aisles of vast law libraries, paging through volume after volume of musty Civil Service reports. All the work has been done for him.

Commission determinations are summarized in the Civil Service Regulations, which list 13 permissible and 13 prohibited activities in clear, comprehensible language.

If the regulations are themselves indecipherable—and in the opinion of the Supreme Court, they are not—the appropriate prescription is an editor's pen, not H.R. 8617.

If an employee is worried that the activity he would like to engage in may be prohibited by the Hatch Act, he can obtain advice from the Information Office of the Civil Service Commission and remove the last traces of doubt as to the legality of his action.

Since the regulations are, in fact, widely distributed and reasonably clear, it is unlikely that many employees refrain from participating in permissible activities because they fear running afoul of the law.

IRONY OF H.R. 8617

It seems ironic that in the present post-Watergate atmosphere, some Members of Congress are urging prosecution of violations of the merit system, while they are, at the same time, urging repeal of the Hatch Act, thereby inviting untold abuses of the merit system. This bill can only heighten the public cynicism toward our institutions.

In recent weeks, concern has been voiced by some Congressional critics that the nomination of a politically experienced official to a sensitive agency might "politicize" that agency. How ironic, therefore, if these same critics now remain silent when a bill like H.R. 8617 threatens to politicize not one agency but the entire Federal government with its 2.8 million Civil Service and Postal Service employees.

Although only a handful of Federal employees would seek to become involved in partisan affairs, if H.R. 8617 becomes law, all will be subjected to the subtle coercive forces that would be unleashed. In the minds of many employees, there is little doubt that such coercive forces would exist.

When asked by the Survey Research Center of the University of Michigan whether repeal of the Hatch Act would "change things like job appointment and job promotion," a majority replied in the affirma-

tive. And every citizen in the country would suffer if the politicization of the Civil Service leads to a deterioration in the quality of service government can provide. Then America would be left with what Chairman Hampton of the Civil Service Commission has described as "a second-class Civil Service."

H.R. 8617 SHOULD BE DEFEATED

This bill, if enacted, will be disastrous for the Federal employees, the Civil Service merit system, and the American public.

It will strip away the protection which the employees have enjoyed under the Hatch Act for the past 36 years.

It will seriously damage the integrity of the merit system and the efficiency of the nonpartisan, independent Civil Service.

And it will be most unfair to the American people who will be saddled eventually with a second class Civil Service open to the evils of the old spoils system.

H.R. 8617 should be defeated.

HIRAM L. FONG.
HENRY BELLMON.

Calendar No. 496

94TH CONGRESS
1ST SESSION**H. R. 8617**

[Report No. 94-512]

IN THE SENATE OF THE UNITED STATES

OCTOBER 22, 1975

Read twice and referred to the Committee on Post Office and Civil Service

DECEMBER 5 (legislative day, DECEMBER 2), 1975

Reported by Mr. McGEE, with amendments

[Omit the part struck through and insert the part printed in *italic*]**AN ACT**

To restore to Federal civilian and Postal Service employees their rights to participate voluntarily, as private citizens, in the political processes of the Nation, to protect such employees from improper political solicitations, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*
 3 That this Act may be cited as the "Federal Employees'
 4 Political Activities Act of 1975".

5 SEC. 2. (a) Subchapter III of chapter 73 of title 5,
 6 United States Code, is amended to read as follows:

1 “SUBCHAPTER III—POLITICAL ACTIVITIES

2 “§ 7321. Political participation

3 “It is the policy of the Congress that employees should
4 be encouraged to fully exercise, to the extent not expressly
5 prohibited by law, their rights of voluntary participation in
6 the political processes of our Nation.

7 “§ 7322. Definitions

8 “For the purpose of this subchapter—

9 “ (1) ‘employee’ means any individual, including
10 the President and the Vice President, employed or
11 holding office in—

12 “(A) an Executive agency,

13 “(B) the government of the District of
14 Columbia,

15 “(C) the competitive service, or

16 “(D) the United States Postal Service or the
17 Postal Rate Commission;

18 but does not include a member of the uniformed services;

19 “ (2) ‘candidate’ means any individual who seeks
20 nomination for election, or election, to any elective office,
21 whether or not such individual is elected, and, for the
22 purpose of this paragraph, an individual shall be deemed
23 to seek nomination for election, or election, to an elective
24 office, if such individual has—

1 “(A) taken the action required to qualify for
2 nomination for election, or election, or

3 “(B) received political contributions or made
4 expenditures, or has given consent for any other
5 person to receive political contributions or make ex-
6 penditures, with a view to bringing about such indi-
7 vidual’s nomination for election, or election, to such
8 office;

9 “(3) ‘political contribution’—

10 “(A) means a gift, subscription, loan, advance,
11 or deposit of money or anything of value, made for
12 the purpose of influencing the nomination for elec-
13 tion, or election, of any individual to elective office
14 or for the purpose of otherwise influencing the re-
15 sults of any election;

16 “(B) includes a contract, promise, or agree-
17 ment, express or implied, whether or not legally
18 enforceable, to make a political contribution for any
19 such purpose; and

20 “(C) includes the payment by any person,
21 other than a candidate or a political organization
22 of compensation for the personal services of another
23 person which are rendered to such candidate or po-

1 litical organization without charge for any such
2 purpose;

3 “(4) ‘superior’ means an employee (other than the
4 President or the Vice President) who exercises super-
5 vision of, or control or administrative direction over,
6 another employee;

7 “(5) ‘elective office’ means any elective public of-
8 fice and any elective office of any political party or
9 affiliated organization; and

10 “(6) ‘Board’ means the Board on Political Activi-
11 ties of Federal Employees established under section 7327
12 of this title.

13 **“§ 7323. Use of official authority or influence; prohibition**

14 “(a) An employee may not directly or indirectly use
15 or attempt to use the official authority or influence of such
16 employee for the purpose of—

17 “(1) interfering with or affecting the result of any
18 election; or

19 “(2) intimidating, threatening, coercing, command-
20 ing, influencing, or attempting to intimidate, threaten,
21 coerce, command, or influence—

22 “(A) any individual for the purpose of inter-
23 fering with the right of any individual to vote as
24 such individual may choose, or of causing any indi-

vidual to vote, or not to vote, for any candidate or
measure in any election;

“(B) any person to give or withhold any political
contribution; or

“(C) any person to engage, or not to engage,
in any form of political activity whether or not such
activity is prohibited by law.

*“(b) Nothing in this section authorizes the use by any
employee of any information coming to him in the course of
his employment or official duties for any purpose where
otherwise prohibited by law.*

~~“(b) “(c)~~ For the purpose of subsection (a) of this
section, ‘use of official authority or influence’ includes, but is
not limited to, promising to confer or conferring any benefit
(such as appointment, promotion, compensation, grant,
contract, license, or ruling), or effecting or threatening to
effect any reprisal (such as deprivation of appointment, pro-
motion, compensation, grant, contract, license, or ruling).

“§ 7324. Solicitation; prohibition

“An employee may not—

“(1) give or offer to give a political contribution
to any individual either to vote or refrain from voting,
or to vote for or against any candidate or measure, in
any election;

1 “(2) solicit, accept, or receive a political contribu-
2 tion to vote or refrain from voting, or to vote for or
3 against any candidate or measure, in any election;

4 “(3) knowingly give or hand over a political contribu-
5 tion to a superior of such employee; or

6 “(4) knowingly solicit, accept, or receive, or be in
7 any manner concerned with soliciting, accepting, or
8 receiving, a political contribution—

9 “(A) from another employee (or a member
10 of another employee’s immediate family) with re-
11 spect to whom such employee is a superior; or

12 “(B) in any room or building occupied in the
13 discharge of official duties by—

14 “(i) an individual employed or holding
15 office in the Government of the United States, in
16 the government of the District of Columbia,
17 or in any agency or instrumentality of the
18 foregoing; or

19 “(ii) an individual receiving any salary or
20 compensation for services from money derived
21 from the Treasury of the United States.

22 **“§ 7325. Political activities on ~~duty, etc.~~; duty; prohibition**

23 “(a) An employee may not engage in political ac-
24 tivity—

1 “(1) while such employee is on duty,

2 “(2) in any room or building occupied in the dis-
3 charge of official duties by an individual employed or
4 holding office in the Government of the United States,
5 in the government of the District of Columbia, or in
6 any agency or instrumentality of the foregoing, or

7 “(3) while wearing a uniform or official insignia
8 identifying the office or position of such employee.

9 “(b) The provisions of subsection (a) of this section
10 shall not apply to—

11 “(1) the President and the Vice President;

12 “(2) an individual—

13 “(A) paid from the appropriation for the
14 White House Office,

15 “(B) paid from funds to enable the Vice Presi-
16 dent to provide assistance to the President, or

17 “(C) on special assignment to the White House
18 Office,

19 unless such individual holds a career or career-condi-
20 tional appointment in the competitive service; or

21 “(3) the Mayor of the District of Columbia, the
22 Chairman or a member of the Council of the District of
23 Columbia, as established by the District of Columbia
24 Self-Government and Governmental Reorganization Act.

1 **“§ 7326. Leave for candidates for elective office**

2 “(a) (1) An employee ~~who is a~~ candidate for elective
3 office shall, upon the request of such employee, be granted
4 leave without pay for the purpose of allowing such employee
5 to engage in activities relating to such candidacy.

6 “(2) Any employee who is a candidate for elective
7 office shall be placed on leave without pay effective begin-
8 ning on whichever of the following dates is the later:

9 “(A) the 90th day before any election (including
10 a primary election, other than a primary election in
11 which such employee is not a candidate) for that elec-
12 tive office, or

13 “(B) the day following the date on which the
14 employee became a candidate for elective office.

15 Such leave shall terminate on the day following the election
16 or the day following the date on which the employee is no
17 longer a candidate for elective office, whichever first ~~occurs~~.
18 ~~The preceding sentence shall not apply to the extent an em-~~
19 ~~ployee is otherwise on leave; occurs, unless the employee is~~
20 ~~otherwise on leave.~~ The Civil Service Commission shall, upon
21 application, exempt from the application of this paragraph
22 any employee who is a candidate for any part-time elective
23 office.

24 “(b) Notwithstanding section 6302 (d) of this title,
25 an employee who is a candidate for elective office shall, upon

1 the request of such employee, be granted accrued annual
2 leave for the purpose of allowing such employee to engage
3 in activities relating to such candidacy. Such leave shall be
4 in addition to leave without pay of such employee under sub-
5 section (a) of this section.

6 “(c) An employee shall promptly notify the agency in
7 which he is employed upon becoming a candidate for elective
8 office and upon the termination of such candidacy.

9 “(d) The ~~foregoing~~ provisions of this section shall not
10 apply in the case of an individual who is an employee by
11 reason of holding an elective public office.

12 **“§ 7327. Board on Political Activities of Federal Employees**

13 “(a) There is established a board to be known as the
14 Board on Political Activities of Federal Employees. It shall
15 be the function of the Board to hear and decide cases regard-
16 ing violations of sections 7323, 7324, and 7325 of this title.

17 “(b) The Board shall be composed of 3 members, ap-
18 pointed by the President, by and with the advice and consent
19 of the Senate. One member shall be designated by the Pres-
20 ident as Chairman of the Board.

21 “(c) Members of the Board shall be chosen on the basis
22 of their professional qualifications from among individuals
23 who, at the time of their appointment, are employees (as de-
24 fined under section 7322 (1) of this title), except that not
25 more than 2 individuals of the same political party may be

1 appointed as members. Employees of the Civil Service Com-
 2 mission shall be ineligible to be appointed to or to hold office
 3 as members of the Board.

4 “(d) (1) Members of the Board shall serve a term of
 5 3 years, except that of the members first appointed—

6 “(A) the Chairman shall be appointed for a term
 7 of 3 years,

8 “(B) one member, designated by the President,
 9 shall be appointed for a term of 2 years, and

10 “(C) one member, designated by the President,
 11 shall be appointed for a term of 1 ~~year.~~ year.

12 An individual appointed to fill a vacancy occurring other
 13 than by the expiration of a term of office shall be appointed
 14 only for the unexpired term of the member such individual
 15 will succeed. Any vacancy occurring in the membership of
 16 the Board shall be filled in the same manner as in the case
 17 of the original appointment.

18 “(2) If an employee who was appointed as a member
 19 of the Board is separated from service as an employee he
 20 may not continue as a member of the Board after the 60-
 21 day period beginning on the date so separated.

22 “(e) The Board shall meet at the call of the Chairman.

23 “(f) All decisions of the Board with respect to the
 24 exercise of its duties and powers under the provisions of this
 25 subchapter shall be made by a majority vote of the Board.

1 “(g) A member of the Board may not delegate to any
2 person his vote nor, except as expressly provided by this
3 subchapter, may any decisionmaking authority vested in the
4 Board by the provisions of this subchapter be delegated to
5 any member or person.

6 “(h) The Board shall prepare and publish in the Fed-
7 eral Register written rules for the conduct of its activities,
8 shall have an official seal which shall be judicially noticed,
9 and shall have its office in or near the District of Columbia
10 (but it may meet or exercise any of its powers anywhere
11 in the United States).

12 “(i) The Civil Service Commission shall provide such
13 clerical and professional personnel, and administrative sup-
14 port, as the Chairman of the Board considers appropriate
15 and necessary to carry out the Board’s functions under this
16 subchapter. Such personnel shall be responsible to the Chair-
17 man of the Board.

18 “(j) The Administrator of the General Services Ad-
19 ministration shall furnish the Board suitable office space ap-
20 propriately furnished and equipped, as determined by the
21 Administrator.

22 “(k) (1) Members of the Board shall receive no addi-
23 tional pay on account of their service on the Board.

24 “(2) Members shall be entitled to leave without loss of
25 or reduction in pay, leave, or performance or efficiency rat-

1 ing during a period of absence while in the actual perform-
2 ance of duties vested in the Board.

3 **“§ 7328. Investigation; procedures; hearing**

4 “(a) The Civil Service Commission shall investigate
5 reports and allegations of any activity prohibited by section
6 7323, 7324, or 7325 of this title. Any such investigation
7 shall terminate not later than 90 days after the date of its
8 commencement, except that such 90-day limitation may be
9 extended upon the written approval of the Board for the
10 period specified in such approval. If the Commission does
11 not make the notification required under subsection (c) of
12 this section before the close of the period for investigation,
13 subsections (c) (2) and (3) and (d) of this section, and
14 section 7329 of this title, shall not apply thereafter to the
15 employee involved with respect to the activities under
16 investigation.

17 “(b) As a part of the investigation of the activities of an
18 employee, the Commission shall provide such employee an
19 opportunity to make a statement concerning the matters
20 under investigation and to support such statement with any
21 documents the employee wishes to submit. An employee of
22 the Commission lawfully assigned to investigate a violation
23 of this subchapter may administer an oath to a witness at-
24 tending to testify or depose in the course of the investigation.

25 “(c) (1) If it appears to the Commission after investi-

gation that a violation of section 7323, 7324, or 7325 of this title has not occurred, it shall so notify the employee and the agency in which the employee is employed.

“(2) Except as provided in paragraph (3) of this subsection, if it appears to the Commission after investigation that a violation of section 7323, 7324, or 7325 of this title has occurred, the Commission shall submit to the Board and serve upon the employee ~~a notice by certified mail, return receipt requested~~ *a written notice by certified mail* (or if notice cannot be served in such manner, then by any method calculated to reasonably apprise the employee) —

“(A) setting forth specifically and in detail the charges of alleged prohibited activity;

“(B) advising the employee of the penalties provided under section 7329 of this title;

“(C) specifying a period of not less than 30 days within which the employee may file with the Board a written answer to the charges in the manner prescribed by rules issued by the Board; and

“(D) advising the employee that unless the employee answers the charges, in writing, within the time allowed therefor, the Board is authorized to treat such failure as an admission by the employee of the charges set forth in the notice and a waiver by the employee of the right to a hearing on the charges.

1 “(3) If it appears to the Commission after investigation
2 that a violation of section 7323, 7324, or 7325 of this title
3 has been committed by—

4 “(A) the Vice President;

5 “(B) an employee appointed by the President by
6 and with the advice and consent of the Senate;

7 “(C) an employee whose appointment is expressly
8 required by statute to be made by the President;

9 “(D) the Mayor of the District of Columbia; or

10 “(E) the Chairman or a member of the Council of
11 the District of Columbia, as established by the District
12 of Columbia Self-Government and Governmental Re-
13 organization Act;

14 the Commission shall refer the case to the Attorney General
15 for prosecution under title 18, and shall report the nature and
16 details of the violation to the President and to the Congress.

17 “(d) (1) If a written answer is not ~~duly~~ filed within
18 the time allowed therefor, the Board may, without further
19 proceedings, issue its final decision and order.

20 “(2) If an answer is ~~duly filed~~, *filed within the time*
21 *allowed*, the charges shall be determined by the Board on
22 the record after a hearing conducted by a hearing examiner
23 appointed under section 3105 of this title, and, except as
24 otherwise expressly provided under this subchapter, in ac-
25 cordance with the requirements of subchapter II of chapter 5

1 of this title, notwithstanding any exception therein for matters
2 involving the tenure of an employee. The hearing shall be
3 commenced within 30 days after the answer is filed with the
4 Board and shall be conducted without unreasonable delay.
5 As soon as practicable after the conclusion of the hearing, the
6 examiner shall serve upon the Board, the Commission, and
7 the employee such examiner's recommended decision with
8 notice to the Commission and the employee of opportunity
9 to file with the Board, within 30 days after the date of such
10 notice, exceptions to the recommended decision. The Board
11 shall issue its final decision and order in the proceeding no
12 later than 60 days after the date the recommended decision
13 is served. The employee shall not be removed from active
14 duty status by reason of the alleged violation of this sub-
15 chapter at any time before the effective date specified by
16 the Board.

17 “(e) (1) At any stage of a proceeding or investigation
18 under this subchapter, the Board may, at the written request
19 of the Commission or the employee, require by subpoena the
20 attendance and testimony of witnesses and the production
21 of documentary or other evidence relating to the proceeding
22 or investigation at any designated place, from any place in
23 the United States or any territory or possession thereof, the
24 Commonwealth of Puerto Rico, or the District of Columbia.
25 Any member of the Board may issue subpoenas and members

1 of the Board and any hearing examiner authorized by the
2 Board may administer oaths, examine witnesses, and receive
3 evidence. In the case of contumacy or failure to obey a sub-
4 pena, the United States district court for the judicial district
5 in which the person to whom the subpoena is addressed
6 resides or is served may, upon application by the Board,
7 issue an order requiring such person to appear at any desig-
8 nated place to testify or to produce documentary or other
9 evidence. Any failure to obey the order of the court may be
10 punished by the court as a contempt thereof.

11 “(2) The Board (or a member designated by the
12 Board) may order the taking of depositions at any stage of
13 a proceeding or investigation under this subchapter. Deposi-
14 tions shall be taken before an individual designated by the
15 Board and having the power to administer oaths. Testimony
16 shall be reduced to writing by or under the direction of the
17 individual taking the deposition and shall be subscribed by
18 the deponent.

19 “(3) (A) After requesting in writing and obtaining
20 the approval of the Attorney General, the Board may de-
21 termine that an employee’s attendance and testimony are
22 necessary to the carrying out of the Board’s functions under
23 this subchapter. For purposes of the preceding sentence, if
24 the Attorney General does not notify the Board in writing
25 within 30 days after the date on which a request for such

1 approval is made that the Board does not have his approval,
2 then such approval is deemed to have been given. Such
3 30-day period shall be extended an additional 10 days if
4 the Attorney General submits in writing to the Board the
5 reason for such extension.

6 “(B) If the Board makes a determination under sub-
7 paragraph (A) with respect to any employee, such em-
8 ployee may not be excused from attending and testifying
9 or from producing documentary or other evidence in obedi-
10 ence to a subpoena of the Board on the ground that the testi-
11 mony or evidence required of the employee may tend to in-
12 criminate the employee or subject the employee to a penalty
13 or forfeiture for or on account of any transaction, matter, or
14 thing concerning which the employee is compelled to testify
15 or produce evidence. No employee shall be prosecuted or
16 subjected to any penalty or forfeiture for or on account
17 of any transaction, matter, or thing concerning which the
18 employee is compelled under this paragraph, after having
19 claimed the privilege against self-incrimination, to testify
20 or produce evidence, nor shall testimony or evidence so com-
21 pelled be used as evidence in any criminal proceeding against
22 the employee in any court, except that no employee shall
23 be exempt from prosecution and punishment for perjury
24 committed in so testifying.

25 “(f) An employee upon whom a penalty is imposed by

1 an order of the Board under subsection (d) of this section
2 may, within 30 days after the date on which the order was
3 issued, institute an action for judicial review of the Board's
4 order in the United States District Court for the District of
5 Columbia or in the United States district court for the judicial
6 district in which the employee resides or is employed. The
7 institution of an action for judicial review shall not operate
8 as a stay of the Board's order, unless the court specifically
9 orders such stay. A copy of the summons and complaint
10 shall be served as otherwise prescribed by law and, in
11 addition, upon the Board. Thereupon the Board shall certify
12 *Board which shall then certify* and file with the court the
13 record upon which the Board's order was based. If application
14 is made to the court for leave to adduce additional evidence,
15 and it is shown to the satisfaction of the court that the addi-
16 tional evidence may materially affect the result of the pro-
17 ceeding and that there were reasonable grounds for failure
18 to adduce the evidence at the hearing conducted under sub-
19 section (d) (2) of this section, the court may direct that
20 the additional evidence be taken before the Board in the
21 manner and on the terms and conditions fixed by the court.
22 The Board may modify its findings of fact or order, in the
23 light of the additional evidence, and shall file with the court
24 such modified findings or order. The Board's findings of fact,

1 if supported by substantial evidence, shall be conclusive. The
 2 court shall affirm the Board's order if it determines that it
 3 is in accordance with law. If the court determines that the
 4 order is not in accordance with law—

5 “(1) it shall remand the proceeding to the Board
 6 with directions either to enter an order determined by
 7 the court to be lawful or to take such further proceedings
 8 as, in the opinion of the court, are required; and

9 “(2) it may assess against the United States rea-
 10 sonable attorney fees and other litigation costs reason-
 11 ably incurred by the employee.

12 “(g) The Commission or the Board, in its discretion,
 13 may proceed with any investigation or proceeding instituted
 14 under this subchapter notwithstanding that the Commission
 15 or the head of an employing agency or department has
 16 reported the alleged violation to the Attorney General as
 17 required by section 535 of title 28.

18 **“§ 7329. Penalties**

19 “(a) Subject to and in accordance with section 7328
 20 of this title, an employee who is found to have violated
 21 any provision of section 7323, 7324, or 7325 of this title
 22 shall, upon a final order of the Board, be—

23 “(1) removed from such employee's position, in
 24 which event that employee may not thereafter hold any

1 position (other than an elected position) as an em-
2 ployee (as defined in section 7322 (1) of this title) for
3 such period as the Board may prescribe;

4 “(2) suspended without pay from such employee’s
5 position for such period as the Board may prescribe; or

6 “(3) disciplined in such other manner as the Board
7 shall deem appropriate.

8 “(b) The Board shall notify the Commission, the em-
9 ployee, and the employing agency of any penalty it has
10 imposed under this section. The employing agency shall
11 certify to the Board the measures undertaken to implement
12 the penalty.

13 **“§ 7330. Educational program; reports**

14 “(a) The Commission shall establish and conduct a
15 continuing program to inform all employees of their rights
16 of political participation and to educate employees with
17 respect to those political activities which are prohibited.
18 The Commission shall inform each employee individually
19 in writing, at least once each calendar year, of such em-
20 ployee’s political rights and of the restrictions under this
21 subchapter. The Commission may determine, for each State,
22 the most appropriate date for providing information required
23 by this subsection. Such information, however, shall be pro-
24 vided to employees employed or holding office in any State
25 not later than 60 days before the earliest primary or gen-

1 eral election for State or Federal elective office held in such
2 State.

3 “(b) On or before March 30 of each calendar year, the
4 Commission shall submit a report covering the preceding
5 calendar year to the Speaker of the House of Representa-
6 tives and the President pro tempore of the Senate for referral
7 to the appropriate committees of the Congress. The report
8 shall include—

9 “(1) the number of investigations conducted under
10 section 7328 of this title and the results of such investi-
11 gations;

12 “(2) the name and position or title of each individ-
13 ual involved, and the funds expended by the Commis-
14 sion, in carrying out the program required under subsec-
15 tion (a) of this section; and

16 “(3) an evaluation which describes—

17 “(A) the manner in which such program is
18 being carried out; and

19 “(B) the effectiveness of such program in
20 carrying out the purposes set forth in subsection
21 (a) of this section.

22 “§ 7331. Regulations

23 “The Civil Service Commission shall prescribe such
24 rules and regulations as may be necessary to carry out its
25 responsibilities under this subchapter. However, no regula-

tion or rule of the Commission or any amendment thereto shall take effect unless—

“(1) the Commission transmits such rule, regulation, or amendments to the Congress; and

“(2) neither House of Congress has disapproved such rule, regulation, or amendment within 30 legislative days from the date of transmittal to the Congress.”.

(b) (1) Sections 8332 (k) (1), 8706 (e), and 8906 (e) (2) of title 5, United States Code, are each amended by inserting immediately after “who enters on” the following: “leave without pay granted under section 7326 (a) of this title, or who enters on”.

(2) Section 3302 of title 5, United States Code, is amended by striking out “7153, 7321, and 7322” and inserting in lieu thereof “and 7153”.

(3) Section 1308 (a) of title 5, United States Code, is amended—

(A) by inserting “and” at the end of paragraph

(2);

(B) by striking out paragraph (3); and

(C) by redesignating paragraph (4) as paragraph (3).

(4) The second sentence of section 8332 (k) (1) of title 5, United States Code, is amended by striking out “second” and inserting “last” in lieu thereof.

(5) The section analysis for subchapter III of chapter 73 of title 5, United States Code, is amended to read as follows:

"SUBCHAPTER III—POLITICAL ACTIVITIES

"Sec.

"7321. Political participation.

"7322. Definitions.

"7323. Use of official authority or influence; prohibition.

"7324. Solicitation; prohibition.

"7325. Political activities on ~~duty, etc.~~ *duty*; prohibition.

"7326. Leave for candidates for elective office.

"7327. Board on Political Activities of Federal Employees.

"7328. Investigation; procedures; hearing.

"7329. Penalties.

"7330. Educational program; reports.

"7331. Regulations."

(c) (1) Sections 602 and 607 of title 18, United States Code, relating to solicitations and making of political contributions, are each amended by adding at the end thereof the following new sentence: "This section does not apply to any activity of an employee, as defined in section 7322 (1) of title 5, unless such activity is prohibited by section 7324 of that title."

(2) Chapter 29 of title 18 of the United States Code is amended—

(A) by adding at the end the following new section:

"§ 614. Extortion of political contributions from Federal personnel

"Whoever, by the commission of or threat of physical violence to, or economic sanction against, any person, ob-

1 tains, or endeavors to obtain, from an officer or employee of
 2 the United States or of any department or agency thereof, or
 3 from a person receiving any salary or compensation for serv-
 4 ices from money derived from the Treasury of the United
 5 States, any contribution for the promotion of a political ob-
 6 ject, shall be imprisoned not less than two nor more than
 7 three years, or fined not more than \$5,000, or both.”; and

8 (B) by adding at the end of the table of sections
 9 for such chapter the following new item:

“614. Extortion of political contributions from Federal personnel.”.

10 (d) Section 6 of the Voting Rights Act of 1965 (42
 11 U.S.C. 1973d) is amended by striking out “the provisions
 12 of section 9 of the Act of August 2, 1939, as amended (5
 13 U.S.C. 118i) , prohibiting partisan political activity” and by
 14 inserting in lieu thereof “the provisions of subchapter III
 15 of chapter 73 of title 5, United States Code, relating to
 16 political activities”.

17 (e) Sections 103 (a) (4) (D) and 203 (a) (4) (D) of
 18 the District of Columbia Public Education Act are each
 19 amended by striking out “sections 7324 through 7327 of title
 20 5” and inserting in lieu thereof “section 7325 of title 5”.

21 (f) The amendments made by this section shall take
 22 effect on the ninetieth day after the date of the enactment
 23 of this Act, except that the provisions of section 7326 (a) (2)
 24 of title 5, United States Code, as amended by this Act, shall

1 take effect on the one hundred and twentieth day after such
2 date.

3 (g) Not later than sixty days after the date of the enact-
4 ment of this Act, the Civil Service Commission shall—

5 (1) establish standards and criteria by which deter-
6 minations shall be made as to which elective offices will
7 be considered part-time elective offices for purposes of
8 administering section 7326 (a) (2) of such title 5, and

9 (2) prepare and transmit a report to the Congress
10 containing such standards and criteria.

Passed the House of Representatives October 21, 1975.

Attest:

W. PAT JENNINGS,

Clerk.

FEDERAL EMPLOYEES' POLITICAL
ACTIVITIES ACT OF 1975

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 8617.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 8617) to restore to Federal civilian and Postal Service employees their rights to participate voluntarily, as private citizens, in the political processes of the Nation, to protect such employees from improper political solicitations, and for other purposes.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate resumed consideration of the bill.

Mr. MCGEE. Mr. President, as the chairman of the Committee on Post Office and Civil Service, I wish to lay out the broad guidelines of intent in this piece of legislation, without torturing the details of the pending proposal. At the conclusion of my remarks, I will put into the RECORD all the necessary details.

I say to my colleagues who are in the Chamber that Senator FONG, the ranking member of the committee, and I have agreed that today we will only lay down the concepts as we see them in regard to the legislation, and we do not anticipate proceeding to amendments or votes today. That process will be undertaken when we resume the session tomorrow.

For the record, Mr. President, I point out that there are many misconceptions about what the pending Hatch Act reform really would do. All it seeks to do is to correct the overreaction and the misdirection that has flowed in the wake of the original Hatch Act back in the late 1930's. That Hatch Act went on the books for some very elementary and rightful reasons.

In the processes of government, generally beginning with Andrew Jackson's tenure in the White House back in the 1830's, on down to the 1930's, it was customary to treat all public jobs in the Federal Government as plums for the political parties; and whichever party won, in general, had most of the plums.

While it had a peculiar attribute of being responsive to the way an election had gone that year, it had many detracting consequences because of the uncertainties of career or continuity, as well as serious questions about the caliber of officials who were appointed.

So a serious effort was made in the late 1930's to lend some dignity to civil servants and to eliminate the unfortunate or excessive political consequences of a non-Hatch Act political era. What were some of those unfortunate practices?

One certainly was demanding from any public servant of the party in power all kinds of deeds not associated with the position he occupied in the Government—generally, political deeds or, in some few instances, misdeeds. The whip was cracked to extract those indulgences because the individual had been appointed to the job as a political reward. The obvious excesses that arose need not be recounted extensively at this time. They are a matter of historical record and are very familiar to all the Members of this body.

What this measure proposes to do, Mr. President, is update, through the experiences of the last 35 or 36 years, the principles of the Hatch Act so that, in the light of the experiences that we have had, we can be sure that it is on the highest road and on the kind of track that was originally intended.

Let me stress one thing at this point in my comments: That is that in no way—let me repeat that—in no way does H.R. 8617 propose to repeal the Hatch Act. In no way are we doing away with the Hatch Act. It is important that its basic concepts and basic principles continue. But, in the years that have followed the Hatch Act, there have been misinterpretations and overinterpretations about what the Hatch Act really meant.

No one can say with certainty what the individuals who wrote the Hatch Act were really thinking. All we can do is record what the legislative history shows the intent to have been and to proceed on those lines. I think the way to proceed to that point is to examine the kind of discrimination that has arisen under the Hatch Act.

For example, it is now, under the decisions made by the commissioners judging such cases, impossible for a civil servant in Federal employment to run for partisan political office. I do not think that the Hatch Act ever intended that—ever—because that denied some American citizens a basic right. That is to stand for public office and be judged by his peers. It does not have to exclude that. It does not have to attach that restriction in order to preserve the basic principles of the act.

Second, it invokes penalties upon civil servants for activities that are associated not with running for office, but because they interest themselves in somebody who is standing for public office. No American citizen, in this day of commitment, of relevance, of believing in the efficacy of our system, should be denied the opportunity to make his commitment in a political way. What the measure before us proposes to do is describe the ground rules so that everybody understands them, so that we do not have a commission that may waver from election to election and from year to year in how it interprets borderline evidences of conduct or misconduct by public employees. It is simply aimed, Mr. President, at removing Federal employees from second-class citizenship.

Federal employees ought to be protected in their rights as citizens; not only their right to vote, but the right to express their political views, the right to work for candidates of their choice as individual citizens, and the right, if they so decide, under the proper guidelines and ground rules, to run for political office as any other citizen—as a member of the National Association of Manufacturers or the AFL-CIO might desire to run for public office. Whatever his credentials, be he a doctor or even a professor, he ought to be entitled to run for public office without the kind of penalties that, at the present time, hobble public servants as they examine whether they ought to take the chance or not.

One or two of my colleagues have mentioned to me that they do not want to encourage some Federal employee who wants to run on a platform to get more retirement benefits or higher salaries for retired military to run against them for the Senate, because just on that one issue, the incumbent can be beaten. If someone can be beaten on that issue, he ought not to be in the Senate. If his base, his profile, his visibility, the things he stands for, do not stand on a better base than that, I have news for him: he is in trouble even before we talk about the Hatch Act.

I think that it is important, as we consider this bill, that we strip away a lot of the rhetoric that surrounds it, a lot of the confusion and obfuscation that tends to focus attention away from the heart of the question.

The matters that affect this legislation are those that seek to protect the citizenship rights and opportunities of a Federal employee. What the bill says, in very carefully chosen terms is that if, for example, a Federal employee wishes to run for some community office—the school board or the county commissioner or the State legislature, or, if you will, the Congress of the United States—there are certain preconditions that must be met and still will enable him to run. One is that he has to take a leave of absence from his job. He cannot run for office from his job in any way.

Second, as he takes that leave of absence, he has to make sure that he does not go back to his job area and browbeat his colleagues there, or shake them down for any kind of consideration while they are on the job. He has to make a clean breast of it.

I must say, as a public employee 18 years ago, it would have been impossible for me, if I may say so, to run for the Senate of the United States if I had had to quit my job as a professor of history on the campus of the University of Wyoming. I would not have dared. The answer simply would have been, no.

There are those who say that would have been great, but there were those who wanted me out of the university, anyway, and they thought maybe they could find me other employment. You kind of meet that both ways.

But I could not have considered running for public office. If one wants to make the assumption that somebody other than MCGEE might have been a good candidate, and the reason he did not run was that he had a public job at a university, federally assisted as land-grant colleges are, I think it makes a very good point for protecting the Federal employee by requiring that he take a leave of absence to run for the job. When it is over, then he should have the option of reinstatement without prejudice to the position at the level of employment that he had occupied before he took that leave of absence.

I am proud to say that at my university, the individual who was most prominent in the role of board of trustees of the university at that time was my colleague from Wyoming (Mr. HANSEN). He was one of those chiefly responsible for making it possible for GALE MCGEE to

have a leave of absence from the University of Wyoming. I take the time to spell that out because that is the pattern that is envisaged in this measure regarding Federal employees that might choose to run for some kind of public responsibility.

It was likewise my opportunity, in the event of defeat, to return at the end of that existing semester in the autumn to the post that I had held, at the same rank, in the history department, without any prejudice in any way. In those days, it was a kind of landmark decision by an administrative body affecting such an operation. That is pretty much the format within which our whole approach to the Hatch Act is envisaged, to try to protect the right of any individual serving in a Federal job, to exercise an element of responsibility as he sees it in standing for some public office at whatever level it may be.

The other factor in the bill that is spelled out with great care has to do with the old and much abused practice under both Republican and Democratic administrations. As we all recognize, once you were in general control of the Government, your party having won the last election, it could shake down the troops. You could require, for example, that employees contribute so much to the party coffers. You could shake them down for contributions to an individual's campaign and put the bee on them in order to gain some inside advantage or you could require that they perform certain services of a political nature to avoid having to hire outsiders to do the same kind of job.

Well, what this bill spells out—and again I ask my colleagues to examine the language in the bill to satisfy themselves that it is indeed totally clear on this—it specifies that no superior can twist the arm, distort, threaten, abuse, or cajole—either the services or the time of a Federal employee who serves under him or any other Federal employee on the job or the premises. But I am not going to take the time to draw out these details because I think, in view of the kind of day this is and the importance of our colleagues trying to beat the snow home tonight, I do not want to protract this unnecessarily. And so I ask that my prepared remarks be inserted into the RECORD at this point.

There being no objection, the prepared statement was ordered to be printed in the RECORD, as follows:

Mr. President, the issue raised by the bill H.R. 8617 is an extremely important one in that it involves the basic citizenship rights of more than 2.8 million Americans who happen to work for their Government.

The bill would restore to these citizens their full political rights, permitting them to participate voluntarily, as private individuals, in the political decision-making processes of their communities, their states, and their Nation.

H.R. 8617 aims at striking a proper and effective balance, however, between the rights of this Government's citizen-employees and the need of our society for a fair and impartial civil service, free from the taint of the spoils system. It does this by amending the so-called Hatch Act, a very restrictive law hastily enacted in 1939 in response to depression era abuses which did not by-and-large involve the career civil service.

There has been an inclination among those who oppose the restoration of these basic civil rights to equate the Hatch Act with the merit system itself. The bill laid before the Senate today in no way alters the merit system. Indeed, it is largely concerned with providing the civil service employee with protections to insulate him against improper solicitations.

H.R. 8617 prohibits those political activities which tend to erode public confidence in the integrity of the civil service and the government itself.

It prohibits political activity on duty, in government buildings, or in uniform.

It bars solicitation of employees or members of their families by those with supervisory authority.

It establishes an independent board to adjudicate violations, thus freeing the Civil Service Commission to concentrate its functions on educating employees on their rights and prohibitions and on enforcement.

It provides for the disciplining of employees in the excepted service in the same manner as applies to those in the competitive civil service.

And it provides a new criminal provision applicable to any person who would extort any contribution from a government employee for political purposes.

The debate over what political latitude should be allowed Government employees is an old one, dating to the second session of the First Congress in 1791, when it was proposed to prevent inspectors enforcing an excise tax on distilled spirits from taking any part in political affairs, other than giving their own vote. The proposed limitation failed in the House, which apparently agreed with Congressman Fisher Ames, who argued that the provision would "muzzle the mouths of freemen, and take away the use of their reason."

The Congress, in enacting the Pendleton Act of 1883, which established the Civil Service Commission, authorized the President to make regulations to prevent a government official from using his official authority or influence to coerce the political action of any person. That authority led, ultimately, to the promulgation of Civil Service Rule 1 in 1907. Rule 1 did prohibit active participation in political campaigns for employees in the competitive service.

Prior to 1939, then, regulation of political activity by persons employed by the govern-

ment was a result of executive branch action. The New Deal era gave rise to concern, however, because of numerous allegations of political solicitation and coercion in relief agencies. These were investigated and documented by the Special Senate Committee. The result was the Hatch Act, which was amended in 1940 to incorporate more than 3,000 pre-1940 administrative determinations into the law and to apply the same restrictions applicable to Federal employees to State and local government employees engaged in Federally-funded activities.

In 1974, as part of the Federal Election Campaign Act Amendments, Congress wisely eliminated most restrictions upon previously covered State and local employees.

The vagueness of the Hatch Act has been long recognized. The Commission on Political Activity on Government Personnel, established by Congress in 1966, observed in its report a year later that, "... there are ever-increasing difficulties confronting public employees in ascertaining what the statutory restrictions mean under the Hatch Act, and in knowing what interpretation has been given to the act by the Civil Service Commission in rulings which often are not published or readily available in usable form."

The Commission also observed in its 1968 report to the President and the Congress that dramatic changes have occurred since the law was enacted in 1939:

"Since 1939, when the Hatch Act was enacted, the American political system has changed dramatically. The growth of Federal responsibilities, the parallel growth of technology in Government, and the need for skilled personnel are eroding away traditional patronage schemes. Not only has the American political system changed, but the growth of the merit principle and impartial administration of Government programs have been integral elements in this transformation."

The Committee on Post Office and Civil Service has been involved in considering changes in the Hatch Act for several years. Hearings were held on earlier proposals in the 92d Congress, and at that time the Civil Service Commission itself testified that it was working on a set of provisions to clarify the law and grant employees a greater degree of political freedom. The Committee patiently awaited these recommendations, which never came.

The need for change to keep up with the times, then, has been widely recognized for some years.

The changes proposed in H.R. 8617 have as their basic thrust the freedom of individual employees to volunteer or not to volunteer, as they freely choose, in the furtherance of a political goal or purpose.

If H.R. 8617 were enacted, then, employees could on their own time, take an active part in a political campaign, hold office in a political organization, or become a candidate on a partisan ticket. They could solicit funds for political purposes, providing no solicitation was made of a subordinate or his family, nor contribution given to a superior. Candidates for full-time elective office, however, would have to take leave without pay from their public employment prior to any election.

In truth, the restrictions of the present law are not as severe as most employees believe, I dare say. Nothing today, for instance, interferes with an employee's registering as a member of a partisan political party. Nothing prevents him from making a donation to the party or candidate of his choice. Nothing bars him from expressing a political opinion. Nothing prevents him from putting a bumper sticker on his car or a pin in his lapel. Yet, the truth is that the do's and don'ts are sufficiently vague and the small print so liberally used that Federal employees are inhibited from exercising many of the rights they do have under the present Hatch Act.

Some argue that the relatively recent disclosure of political abuses, including patronage rings in a number of government agencies, demonstrates the need for holding a tight rein on government employees. But those abuses did not flow from voluntary activity by career employees in their own free time. Those abuses stemmed from the misuse of power by those cloaked with executive authority. Indeed, it can be argued, and I will argue, that what we need is more voluntary participation in our political processes, not less.

What the Watergate-era abuses demonstrate is the need for more effective application of merit principles. Too, they may show the need for more effective protection of the employee against coercive activity from above. And that is provided for in H.R. 8617.

The bill before us provides stronger controls over those who would coerce political activity or contributions from government employees than does the current law. Indeed, if we were faced with a bill which simply lifted the ban on a wide range of political activities without adding any protections for the employee to insure him against being pressed into involuntary political participation, then I would undoubtedly be arguing on the other side of the issue. But that is not the case.

This bill expands the investigatory and prosecutorial powers of the Civil Service Commission. No longer will the Commission have to await a complaint. Rather, it can seek out infractions on its own. No longer will there be an uneven application of the law, whereby the Commission might act to suspend a career employee while a confederate in the excepted service goes unpunished because the Commission lacks authority to discipline him and his agency fails to do so.

This bill establishes an independent adjudicatory Board with the power to issue subpoenas, order depositions, and compel testimony. And it provides for judicial review of that Board's actions.

This bill provides for a wide range of penalties so that the disciplinary measures can fit the crime, so to speak.

Mr. President, the bill does exempt one class of Executive Branch employees from the restrictions against engaging in political activity while on duty, in a government office or building, or in uniform. That restriction is waived for the President, the Vice President, and for those employees working directly for them in the Office of the President and Vice President. This exemption was

extended originally by the House Committee in its consideration of H.R. 8617 and left untouched by the Senate Committee on Post Office and Civil Service as a practical matter, since the President of the United States and the Vice President, if they are to seek reelection, must be allowed to carry out their official duties at the same time. Those prohibitions in the bill, however, are not waived for any others, save the elected Mayor and Chairman or Members of the District of Columbia Council.

Let me say that it is not the intent of the Committee to interfere with any other provision of law. We simply realize that activities related to political campaigning do overlap with the official duties of elected officials, as in simply scheduling the day's activities for example. At present, employees paid from the appropriation for the Office of the President are exempt from these provisions of the Hatch Act which forbid active political campaigning or campaign management as it is defined by the Civil Service decisions encompassed by the law.

This exemption, also, does not run to those sections of the bill which pertain to the use of official authority or influence for political purposes or to the solicitation of political contributions.

Our real focus, furthermore, has not been upon the handful of people employed by the White House, but upon the 2.8 million fundamentally disenfranchised citizens who do the public's business in vital and important but less glamorous surroundings—your letter carrier, the clerk in the local Social Security Office, the civil engineer employed by the Defense Department at any one of its numerous installations, or the nurse in a V.A. Hospital. These are the people to whom we propose to restore their rights to fully participate in the most fundamental processes of a free society.

Mr. President, the charge has been made, and repeated many times over in form letters and postcards which I'm sure every member has received, that this legislation really has as its purpose the enhancement of labor unions' "clout" in the Federal sector. It simply is not so. It is true that most, but by no means all, labor unions representing Federal employees favor the changes proposed in the laws limiting their members' political rights. They may well see some advantage in, for instance, having active members free to administer voluntary political programs and funds. But that is not so bad. To me, it seems preferable, in fact, to having the members' programs run by full-time officers.

The real reason for H.R. 8617 lies in the belief of its sponsors and supporters that the individual citizen's rights must be guaranteed and that any limits placed on those rights for the benefit of the society overall must be carefully weighed.

Whose rights are so restricted today? My own State of Wyoming has one of the smaller Federal employee concentrations in the Nation—due no doubt to our small population. Wyoming has roughly 6,000 Federal employees. Among them are 69 civil engineers, 199 foresters and conservation scientists, 72 geologists and geophysicists, 9 mathematicians and 3 statisticians, 28 ac-

countants and auditors, 122 registered nurses, 7 veterinarians, 1 speech and hearing clinician, 2 museum curators, 6 dentists, 12 draftsmen, 280 biological science technicians, 65 air traffic controllers, 1 nuclear medicine technologist, 46 electricians, 2 radio mechanics, 7 sewage plant operators, 23 plumbers and pipefitters, 1 cabinet maker, 5 stonemasons, 16 switchboard operators, 252 typists, and 101 truck drivers.

That is pretty much a cross section of the population overall. These people are like all other Americans. Some belong to unions; some don't. Some belong to churches; some don't. Some belong to Rotary or Kiwanis; some don't. Some are Republicans, some Democrats, some independents, and others, I'm sorry to say, probably take little if any part in our political processes.

What they do in their own free time as private citizens is really no business of mine, of yours, or of the government's, so long as it does not impair their efficiency. And let us not forget that these are responsible people, certainly as capable as any other group of Americans to be trusted to use sound judgment and discretion in ordering their own affairs. I do believe they deserve the opportunity to exercise that judgment and discretion, and therefore ask support of H.R. 8617.

* * * * *

The Senate continued with the consideration of the bill (H.R. 8617) to restore to Federal civilian and Postal Service employees their rights to participate voluntarily, as private citizens, in the political processes of the Nation, to protect such employees from improper political solicitations, and for other purposes.

Mr. FONG. Mr. President, I rise in strong opposition to this legislation, H.R. 8617.

The distinguished chairman of the Post Office and Civil Service Committee has emphasized very strongly in his statement that this legislation does not repeal the present Hatch Act.

Although it is true that this legislation does not in toto repeal the Hatch Act, it, in fact, utterly cuts out, excises, emasculates, if we wish, from the present Hatch Act, the heart of the Hatch Act, the larger part of provision 9(a) which prohibits Federal employees from taking an active part in political management and in political campaign.

The stated purpose of the bill is to provide Federal employees more flexibility in political expression than they now enjoy under the Hatch Act. This the bill proposes to do by repealing current restrictions on employee participation in partisan politics such as running for partisan political office, managing election campaigns, fundraising, soliciting votes, endorsing candidates, and addressing po-

litical gatherings.

In effect, H.R. 8617 would wipe out long-standing, time-tested, effective prohibitions against active participation in partisan politics by Federal workers. In lifting the legal restrictions of many years' experience, H.R. 8617 would open a Pandora's box of political evils. It would strip away the needed protections and leave employees unshielded from political pressures.

The end result would be the erosion of the Civil Service merit system, the return of the old, despised "spoils system" of political favoritism, and the placing of excessive power in the hands of large public employee unions. In short, it would pave the way for the death of the Hatch Act and the beginning of a dangerous new political patronage system.

BACKGROUND OF THE HATCH ACT

Some limitations on the active participation in partisan political activities by Federal employees have been a part of the Federal policy since the Nation was founded. The question of prohibiting such political activities was debated as early as the second session of the first Congress in 1791. George Washington voiced his concern about partisanship in the public administration, and succeeding Presidents also expressed the desirability of limiting the political activities of Federal civil servants.

President Thomas Jefferson promulgated the first restrictions on the political activities of the executive branch personnel. A directive he issued in 1801 expressed his dissatisfaction with the active participation of Federal personnel in Federal and State elections and warned them not to "attempt to influence the votes of others, nor take any part in the business of electioneering * * *."

Later Presidents also sought to impose similar restrictions in an effort to curb a growing spoils system that caused inefficiency, favoritism, and corruption in the Government. The patronage system persisted until the shocking assassination of President James A. Garfield by a disgruntled office seeker in 1881. The reform movement gained strong momentum and, 2 years later, in 1883, Congress passed the Pendleton Civil Service Act which created the Civil Service Commission.

The 1883 law prohibited Government officials and employees from using their authority or influence to coerce political action. It also provided that a public employee was not under any obligation to make a political contribution or perform any political service, and further that the employee may not be fired or penalized for refusing to do so. But it did not specifically ban political activity of employees.

In 1907, President Theodore Roosevelt issued an Executive order which stated that while persons in the competitive classified service could express privately their opinions on all political subjects, they were prohibited from taking any active part in political management or in political campaigns. Having previously served on the Civil Service Commission, he was fully aware of the need for a ban on political activity.

The language of the Roosevelt Executive order was immediately incorporated into Civil Service rule I. The Civil Service Commission had concluded after 24 years of experience that the prohibitions contained in the 1883 act, and rule I promulgated under it, against using official authority or influence to coerce the political action of others or interfere with elections, was not sufficiently effective in controlling improper political activities on the part of those in office.

WPA SCANDAL

During the Great Depression of the 1930's and the New Deal-inspired Works Progress Administration—WPA—the Senate created a special committee to investigate alleged use of relief and work-relief funds for political purposes. The committee found extensive misuse of Federal relief funds in the 1938 election campaign, uncovering widespread solicitation of campaign funds by Federal and State officials from employees receiving Federal pay. Congress quickly responded by passing the Hatch Act of 1939.

The investigation by the Sheppard committee into the WPA scandals was thorough and extensive. It documented case after case of political coercion spreading across 10 States. It did its task so thoroughly there was no disputing the fact of widespread political abuses and the need for Congress to quickly pass the Hatch Act.

COMMISSION ON POLITICAL ACTIVITY

Twenty years later, in 1966, Congress saw the need to review the operation of the Hatch Act and other Federal laws. It wanted to assess the effect of laws regulating the political activity of public employees. It established a Commission on Political Activity of Government Personnel to conduct the study and to report to the President and Congress by the end of 1967 with recommendations for legislative changes.

The Commission was made up of 12 top-flight members of both major political parties—four appointed by the President and four each by the President of the Senate and the Speaker of the House. Its chairman was Arthur S. Flemming, former president of the University of Oregon; Secretary of Health, Education, and Welfare from 1958-61;

and member of the U.S. Civil Service Commission for 9 years. The others were Members and former Members of Congress; public administrators; and experienced men from the education and the business worlds.

The Commission sought the views of the Civil Service Commission; held a series of public hearings in the key cities of Washington, D.C., Atlanta, Dallas, Chicago, Boston, and San Francisco. The Commissioners heard representatives of Government employee unions, local political leaders, political scientists, representatives of interested organizations, and directors of State merit system offices.

In addition, a major survey of Federal employee opinion, inquiries to State employees and State and country political party chairmen, staff research, and information gathering from other available sources furnished the data for extensive discussion of issues by the Commission members.

What resulted was the most thoroughgoing investigation ever conducted into the subject of participation of Government officers and employees in political activity.

In undertaking its task, the bipartisan group carefully attempted to accommodate and reconcile two vitally important, but sometimes competing objectives.

On one hand, the Commission recognized the importance of encouraging the participation of as many citizens as possible in the political processes which shape our Government. On the other hand, it also acknowledged the importance of assuring the integrity in the administration of public service and the development of an impartial civil service free from partisan politics.

It made 10 recommendations and voiced the opinion that the best protection that the Government can provide for its personnel is to prohibit those activities that tend to corrode a career system based on merit. This, the Commission said, requires strong sanctions against coercion and requires some limits on the role of the Government employee in politics. It was the unanimous view of the Commission members that these limits should be clearly and specifically expressed.

Now, let us examine how these views of the Commission compare with the provisions of H.R. 8617. H.R. 8617 sets no real limits on political activity for Federal employees, except in an extremely limited number of areas, and the bill does not even define what "political activity" is. Thus, H.R. 8617 went overboard to remove virtually all restrictions on political management and campaign-

ing—contrary to the Commission's recommendation.

The only matters on which there was substantial disagreement within the Commission related to the kinds of local public office and local party office a Federal employee should be permitted to hold.

UNANIMOUS AGREEMENT

Commission members were in unanimous agreement that Federal employees should be barred from positions of chairman, vice chairman, or treasurer of any national political party. Most Commissioners felt that this prohibition should also extend to similar State, county, or city political offices. These opinions are disregarded in H.R. 8617, which would allow Federal employees to serve as officers in partisan political parties at all levels.

The recommendations of the Commission were incorporated in a draft bill. In the very important area of political management and political campaigns, the Commission's bill would prohibit certain political activities which have been the particular object of abuse and public criticism. Among such activities prohibited are these:

First, partisan political fundraising at any level;

Second, engaging in political activity while on duty or on Government property;

Third, becoming a candidate or campaigning for or holding an office of the United States, a State, or other office except a "local office";

Fourth, managing a campaign for a candidate seeking such an office;

Fifth, acting at any polling place as an official recorder, checker, watcher or challenger; and

Sixth, serving as an officer in a political organization such as chairman, vice chairman, or treasurer of any national, State, county, or city party.

Here, we see a very wide divergence between what the model bill would prohibit and what H.R. 8617 would prohibit. H.R. 8617 has none of the recommended prohibitions on political activity except one—engaging in political activity on duty or on Government property. The Commission's model bill would bar all other listed political activity; H.R. 8617 would not.

The Commission combined political science research techniques with public hearings in an effort to gather information about the effect of the Hatch Act.

INTERVIEWS WITH EMPLOYEES

Because much was said in the hearings as to how public employees feel about existing laws and their application, the Commission decided to test the opinion

of employees themselves. It contracted for the services of the Survey Research Center, University of Michigan, an organization that has been conducting national political surveys since 1952.

The survey was done with great care and professional competence. Its starting point was a statistical sample maintained by the Civil Service Commission of every Federal employee whose social security number ends in 5—a tenth of all Federal employees. From approximately 167,000 entries on magnetic tape prepared by the Civil Service Commission, the sampling section of the Survey Research Center drew a sample of 1,108 Federal merit system employees who, with the cooperation of the Federal agencies, were interviewed at work during July and August 1967. The results, by October, was a survey of 980 Federal employees' opinions about the Hatch Act. The survey allows generalization on a statistical basis to 1,641,190 Federal employees.

In addition, the Commission conducted a case study of State employee opinion in the four most populous States—New York, California, Pennsylvania, and Texas. The study used a mailed questionnaire and obtained 60 percent overall response.

Another questionnaire was mailed to 102 State chairmen and 489 county chairmen to obtain their observations as to the effect of the Hatch Act on their political parties. Again, the response rate was about 60 percent—a high rate which enhanced the study's validity.

Still another research included a compilation of State laws regulating the political activities of State employees; a study of legislation and rules regulating political activity of public employees in other nations; an analysis of all Civil Service Commission cases since 1939 in which charges were issued; and the production of a bibliography of books, articles, cases, and legislative documents from the great abundance of materials resulting from the research.

SURVEY FINDINGS

In view of the survey's extensive sampling of opinions of Federal employees, what were some of the findings? Below are a few of the more interesting results:

ATTITUDES TOWARD CHANGES IN THE HATCH ACT

Question: Do you favor some changes in the act, or do you think it should remain the way it is? What kinds of changes do you have in mind? (Asked only of those who had heard of the Hatch Act and said they know the general purpose of it)

	Percent
Should remain as is; do not favor changes	35

Should be changed to allow more participation in political activity (general mention)	19
Should allow Federal employees to campaign or work for a political party or candidates of his choice	13
Should allow Federal employees to hold local or nonpartisan office	6
Should allow Federal employees to hold political or partisan office	6
Should be changed (not ascertained how)	5
Should allow freedom to speak on political matters, discuss politics when they want	4
Repeal the Hatch Act	3
Should allow local participation of all kinds (except holding office)	3
Should lessen or decrease the penalties	2
Should tighten and clarify the restrictions	1
Should allow Federal workers to drive people to the polls	1
All other responses	3
Do not know what changes should be made	12

Total (percentages add to more than 100 due to multiple responses)

Question: If Federal employees were allowed to be more active in politics, do you think that would change things like promotion decisions and job assignments?

	Percent
Yes	52
No	45
Do not know	3

Total 100

Question: If Federal workers were allowed to do more things in politics, what differences would this make in your own political activities away from work? Would you be:

	Percent
A lot more active	8
Somewhat more active	14
A little bit more active	18
Stay about the same	60
Total	100

EFFECTS OF RESTRICTIONS ON THE POLITICAL ACTIVITY OF FEDERAL EMPLOYEES

Question: Have you ever wanted to take part in particular kinds of political activities but didn't because you were a Federal employee? Has this happened several times, or only once or twice?

	Percent
Yes, several times	16
Yes, once or twice	13
No	71
Total	100

GENERAL POSITION ON ALLOWING MORE POLITICAL PARTICIPATION

Question: All things considered, do you think the rules should be changed to allow Federal employees like yourself to participate in politics more, should they be changed to allow less participation, or should they remain about the same?

	Percent
Allow more participation	47
Remain the same	48
Allow less	1

Do not know-----	3
Total -----	99

I have called special attention to the survey of the Commission on Political Activity of Government Personnel because it was a most thorough and scientific project. It probably stands above any other such interviews of Federal employees on their political attitudes. It is truly a milestone in the field of objective polling.

The survey underscores the opinions expressed by Commission members on the need for setting some limits on the role of the Government employee in politics and on the need for these limits to be clearly and specifically expressed—requirements which are missing from H.R. 8617.

I feel compelled to note that the Senate Post Office and Civil Service Committee, which reported H.R. 8617, did not investigate the Hatch Act subject thoroughly. The committee held only 2 days of hearings and heard only 21 witnesses last November. Compare these 2 days of hearings with the very extensive hearings conducted by the Commission on Political Activity of Government Personnel. The 2 days of hearings by the Senate Committee were certainly very limited. On the other hand, the Commission on Political Activity held 3 days of hearings in Washington, D.C.; 1 day in Atlanta, Ga.; 1 day in Dallas, Tex.; 2 days in Chicago, Ill.; 1 day in Boston, Mass.; and 2 days in San Francisco, Calif. A total of 90 witnesses testified.

In addition, a scientific sampling of Federal employee opinion was conducted by the Survey Research Center of the University of Michigan, an organization which has been conducting national political surveys since 1952. Also, the Commission conducted a case study of State employee opinion in the four most populous States—New York, California, Pennsylvania, and Texas. In addition, a mail questionnaire was sent in those States, with a 60-percent response. A questionnaire was also sent to 102 State chairmen and 489 county chairmen as to the effect of the Hatch Act on their political parties, again with a 60-percent response.

Still another research included a compilation of State laws regulating the political activity of public employees in other nations; an analysis of all Civil Service Commission cases since 1939 in which charges were issued; and the production of a bibliography of books, articles, and legislative documents from the great abundance of materials resulting from the research.

This shows how thoroughly the Commission went into the subject matter as compared with the very abbreviated treatment this bill received in the Senate committee.

In view of the complexity of the bill and its numerous and far-ranging ramifications, H.R. 8617 should have been explored in depth. Given a fuller hearing, is likely that the many flaws in the bill could have been brought out and aired at that time.

HATCH ACT IN PERSPECTIVE

I have attempted to trace for you the history of political activity by Federal personnel. It goes back to the early days of our national government—back to the days of Thomas Jefferson. President Jefferson had issued the first executive order admonishing Federal officials not to take any part in electioneering. The history of the old spoils system was an unhappy legacy until Congress passed the Pendleton civil service law establishing a formal merit system in 1883. Just before that, President James A. Garfield had been assassinated by a disgruntled office seeker.

It was President Teddy Roosevelt, a former Civil Service Commissioner, who by executive order 642, on June 3, 1907, amended a civil service rule and stated that while persons in the competitive service could express privately their opinions on all political subjects, they "shall take no active part in political management or in political campaigns."

In 1938, the Sheppard committee of the Senate brought under official scrutiny the many abuses of political pressures and favoritism in the New Deal public works apparatus, which led to the passage of the Hatch Act a year later.

The 1966-67 study by the congressionally created Commission on Political Activity of Government Personnel showed the Hatch Act was still an indispensable tool in keeping partisan politics out of the Federal bureaucracy. It recommended retaining many of the Hatch Act restrictions on employee participation in political management and campaigning.

This history shows the evolutionary process leading to the enactment of the Hatch Act. It has been a long and slow development in our Nation's history. The Hatch Act has served our Nation well.

But now, less than 10 years after a duly constituted commission of Congress—after long and careful study, research, and hearings—recommended the retention of the "no politics" provisions of the Hatch Act, we are confronted with a determined attack on the most vital part of the law by the bill which is before us.

H.R. 8617, if enacted, would open the door to the old, despised patronage system based on favoritism and not on merit. So we must marshal our forces to defeat this very bad legislation.

SCUTTLE THE HATCH ACT

In advocating enactment of H.R. 8617, now before the Senate, proponents are in effect asking for repeal of the most vital part of the Hatch Act—the part containing the prohibition relating to active participation in political campaigns in a management capacity or as a candidate in a partisan election. The proponents appear determined to cut out the heart of President Theodore Roosevelt's Executive order of 1907 forbidding partisan politicking in the Federal civil service system. They insist on repudiating the spirit and purpose of Thomas Jefferson's Executive order of 1801 which warned Federal employees against taking "any part in the business of electioneering."

The long and carefully evolved principle of keeping partisan politics out of the merit system would be discarded if H.R. 8617 becomes the law of the land, for H.R. 8617 would lift the Hatch Act's ban on virtually every partisan political activity now prohibited in the areas of political management and campaigning. Twelve of the thirteen prohibited activities in these areas of political management and campaigning would be repealed by the bill, ranging from running for partisan office and fundraising to soliciting votes and serving as an officer of a political party at all levels.

The records of the Civil Service Commission show that it is in the areas of political management and campaigning that the overwhelming majority of Hatch Act violation complaints arise. Statistics for the 5-year period from 1970 to 1974 indicate the Commission processed 211 complaints of alleged violations on the part of Federal employees in the areas of candidacy, campaigning, and management. By contrast, only 29 complaints were processed in the categories of soliciting contributions and misuse of official authority.

Some advocates of H.R. 8617 make much of the bill's provisions to control soliciting contributions and misuse of authority as though these areas represent the major problem of enforcement of the Hatch Act, when in fact they are a minor part, as the figures show. These same advocates largely ignore or minimize the much more extensive areas of complaints in political management and campaigning. It is these restrictions on political management and campaigning which H.R. 8617 would repeal in their virtual entirety.

Those who are most acquainted with the history and significance of the Hatch Act are the people who are today most concerned about the current effort to scuttle this law and all the protections sought by dedicated public leaders going all the way back to the early days of our Nation. These people fully understand the crippling effect such a move would have on our Government and its ability to furnish honest, impartial, and efficient service to the American people.

Such a concerned organization is the National Civil Service League, founded in 1881 by reformers—among them Teddy Roosevelt—to lobby successfully for the Nation's first civil service law in 1883. Its chairman of the board today is Mortimer M. Caplin, former Commissioner of Internal Revenue.

In the opinion of the league, H.R. 8617 is "inimical to merit employment and apt to lead to a rebirth of the spoils system against which the League has fought for more than 90 years."

Proponents of H.R. 8617 claim that the bill is legislation wanted by public employees, that it is time to scrap the present Hatch Act, and that if enacted, the legislation would not endanger the integrity of Government administration and the civil service merit system.

UNWANTED LEGISLATION

I totally disagree with these claims. After careful consideration of all aspects of this important subject, I have come to the conclusion that H.R. 8617 is unwanted by most public workers, is unacceptable legislation, and if enacted, will have disastrous consequences for the Federal civil service employees, the merit system, and the best interests of the American people. It should be defeated.

As the ranking minority member of the Committee on Post Office and Civil Service, I heard testimony of numerous witnesses and diverse points of view on H.R. 8617. The testimony presented at the Senate committee hearings; a review of the House subcommittee hearings and committee report, and the House debate; my study of the history of the Hatch Act; and my general discussions with other on this subject—all these have led me to the conclusion that H.R. 8617 is dangerous legislation and should be rejected.

I have set forth in detail my reasons for opposing this bill in the minority views accompanying H.R. 8617. My distinguished colleague on the Committee on Post Office and Civil Service, Mr. BELLMON, joined me in this report.

Mr. President, I turn now to proper limits on political activity.

We are dealing here with a difficult subject—the setting of proper limits on the political activity of government per-

sonnel. On one hand, we all recognize the constitutional rights of citizens, including Federal Government personnel, to participate in the political processes of the Nation. On the other hand, we must assure the integrity of the administration of our Government and maintain an impartial, nonpolitical civil service free from partisan politics.

I concur with the opinion of the Commission on Political Activity of Government Personnel that:

The best protection that the government can provide for its personnel is to prohibit those activities that tend to corrode a career system based on merit. This requires strong sanctions against coercion. It also requires some limits on the role of the government employee in politics.

The Hatch Act meets those requirements. For 36 years it has served our country well. It has succeeded in preventing political erosion of the civil service system based on merit. Despite occasional inroads, the Hatch Act still serves as an effective shield to protect Federal employees from the pressures of partisan politics. By barring their participation in partisan political management and campaigning, the Hatch Act has freed public workers from coercion—subtle or otherwise—of politically ambitious individuals and groups.

Since the Hatch Act has served its "politics free" purpose so well for so long, why is there a clamor now for emasculating it? And where is the pressure coming from?

PRESSURE FROM UNION LEADERS

Support for H.R. 8617 comes primarily from leaders of Federal civilian employee and postal unions, most of them, affiliated with the newly organized Public Employee Department of the AFL-CIO. These leaders contend that the Hatch Act has relegated their members to the status of "second-class citizens" by denying them the opportunity to take part actively in partisan political activities. They assert that this denial constitutes an unreasonable restriction on Government employees. They even imply that Hatch Act restrictions on Federal workers are somehow related to the low voter turnout in national elections.

These contentions cannot stand up to close examination. The facts do not sustain their arguments.

I do not believe that Federal employees are second-class citizens or that most regard themselves as such. Moreover, the Supreme Court has clearly ruled that Hatch Act proscriptions on partisan politicking are not an unreasonable restriction on Federal workers.

The right to participate in politics is not, and has never been absolute. In U.S.

Civil Service Commission against Letter Carriers, the Supreme Court in 1973 sustained the constitutionality of that provision in title 5, United States Code, which prohibits Federal employees from taking an active part in political management or in political campaigns, the very provision H.R. 8617 would repeal.

The Court held that:

A major thesis of the Hatch Act is that to serve this great end of government—the impartial execution of the laws—it is essential that Federal employees not, for example, take formal positions in political parties, not undertake to play substantial roles in partisan political campaigns and not run for office on partisan political tickets. Forbidding activities like these will reduce the hazards to fair and effective government. . . .

There is another consideration in this judgment: it is not only important that the government and its employees in fact avoid practicing political justice, but it is also critical that they appear to the public to be avoiding it, if confidence in the system of representative government is not to be eroded to a disastrous extent.

The Supreme Court has repeatedly held that the interests of society must be balanced against the interests of the individual. In this case, it seems reasonable, and the lesson of history shows it is necessary, to curtail the political activities of Federal employees in the interests of society. Impartial administration of the law without regard to personal convictions or political affiliations is required for a fair and efficient government.

MANY PERMISSIBLE ACTIVITIES

First amendment rights of Federal employees are not placed in a strait-jacket under the Hatch Act, as claimed by proponents of H.R. 8617. While there are prohibited activities under the Hatch Act, there are at least as many permissible activities. An employee may register and vote in any election; express his opinion privately and publicly on political subjects and candidates; display a political picture, sticker, badge, or button; participate in the nonpartisan activities of a civic, community, social, labor, or professional organization; be a member of a political party and participate in its activities to the extent consistent with law; attend a political convention, rally, fund-raising function, or other political gathering; sign a petition as an individual; take an active part, as an independent candidate, or in support of an independent candidate, in a nonpartisan election; be politically active in connection with a question not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal

ordinance or any other question or issue of a similar character; and serve as an election judge or clerk, or in a similar position to perform nonpartisan duties as prescribed by State or local law.

In short, Federal employees are permitted far more political involvement than most citizens usually seek.

As to the notion that Hatch Act restrictions are somehow related to the low voter turnout in national elections, this is nonsense. If there is one right above all others which is guaranteed Federal employees under the Hatch Act, it is their right to vote. Their right to the ballot has never been questioned, not even by the critics of the Hatch Act. If a Federal employee chooses not to exercise this right, it is that employee's privilege, but it is definitely not because he or she is prohibited from doing so by the Hatch Act. As a matter of fact, my impression is that Federal employees as a whole exercise their franchise more freely than the average citizen.

SELL LACKS GRASS ROOTS SUPPORT

Are "grass roots" Federal workers clamoring for repeal of the Hatch Act? Not that one can discern from various polls and questionnaires. The contrary appears to be the case, according to a poll conducted by Representative JOSEPH L. FISHER, Democrat of Virginia, among his northern Virginia constituents, of whom one-third to 40 percent are civil servants. Of 20,000 individuals who responded to his questionnaire, 59 percent expressed opposition to any change in the Hatch Act. In addition, his mail indicated that civil service employees who want the status quo outnumbered others 8 or 10 to 1.

Representative GILBERT GUDE, Republican of Maryland, testified that his mail reflected constituent sentiments similar to those reported by Representative FISHER in his district.

What is significant in both cases is that the two Congressmen represent districts which have the largest civil service employee constituencies of any in the country outside of Washington, D.C.

Representative ELIZABETH HOLTZMAN, Democrat of New York, said responses by constituents to her questionnaire were 2 to 1 against weakening the Hatch Act.

In still another sampling of sentiment on the issue, only two members out of 3,000 career civil service members of the Federal Executive Alumni Association who were polled by mail wanted the Hatch Act changed.

My own mail showed strong opposition to changing the Hatch Act. Most constituents who wrote me expressed seri-

ous concern that "Federal workers must be protected from union political exploitation."

Previously, I have already described in detail the 1967 study for the congressionally-created Commission on Political Activity of Government Personnel by the Survey Research Center of the University of Michigan. The study revealed strong sentiment among Federal employees for keeping the Hatch Act unchanged. Of 14 categories of responses concerning their attitudes toward changes in the Hatch Act, the one with the highest response was:

The Hatch Act should remain as is; do not favor changes.

Only 3 percent said they favor repeal of the Hatch Act.

89 PERCENT WANT HATCH ACT AS IS

The most revealing expression of opposition to changing the Hatch Act came from the widely-respected National Federation of Federal Employees, NFFE, the largest independent union of Federal career employees, representing 136,000 workers. Its president, Nathan T. Wolkomir, testified that 89 percent of the members polled registered strong support for continuing the Hatch Act as is.

If any other union conducted a poll of its members on this question, no such data were offered at the Senate committee hearings.

The University of Michigan's Survey Research Center found that, generally, more than 60 percent of those surveyed reported that they would not perform any additional political activity if the restrictions in the Hatch Act were removed, and generally less than 10 percent reported they would become a lot more active.

I suggest that the Senate authorize a new survey to learn if this view among Federal employees has changed since the 1967 survey and, if so, in what direction. My judgment, based on all the indications cited, is that most Federal employees do not seek to engage in additional political activities but they do wish to retain the protection afforded them by the Hatch Act.

Why is there such a concerted drive among leaders of Federal civilian and Postal Service unions are drastically changing the Hatch Act?

The most forthright answers came from union officials themselves—one who favors no change, the other a strong advocate of H.R. 8617:

Nathan Wolkomir of the NFFE:

There is no question in my mind that this is a further attempt by the AFL-CIO to have terrific impact on the Hill (Congress).

John McCart, executive director, public employee department, AFL-CIO:

I suppose that to the extent we make our people more aware of the political process, you could say that we could acquire more political clout. But what's wrong with that? Our union's whole history is related to politics.

Public employee unions in 1939, when the Hatch Act became law, were not the large, powerful organizations they are today. Where there were only 180,000 Federal employees represented by unions in 1963—the earliest data available—the number had jumped to 1,142,419 in 1974—an increase of more than six times in an 11-year period.

Their spectacular growth, the militancy of some of their leaders, their national impact in this jet-age industrial society—all make the Hatch Act even more important and necessary today to protect Federal employees from potential pressure from union officials.

STRENGTHENING LEADERS' POWER

The power of leaders of the public employee unions would be tremendously strengthened by enactment of H.R. 8617. Hundreds of thousands of Federal workers on public payrolls would be available for staffing party organizations and campaigns to work for union goals. Federal employee unions' political action funds could be targeted more effectively on Senate and House candidates willing to do their bidding once elected.

What H.R. 8617 does, essentially, is to remove many of the prohibitions on partisan political activity that, in the past, have insulated Federal workers from political pressures from above. Under this bill, it will no longer be illegal for Federal employees to manage political campaigns; to run for partisan political office at the Federal or other levels; to solicit, receive, collect, handle, disburse or account for political assessments, contributions or funds; to organize, sell tickets to, promote or actively participate in partisan fundraising activities; to endorse or oppose a partisan candidate for public office in political advertisements, broadcasts, or campaign literature; or to serve as officers of political parties.

HATCH ACT'S TWO-WAY PROTECTION

The existing Hatch Act, although not perfect, offers a two-way protection. Federal employees are insulated from pressures to become involved in party politics, campaigns, or fundraising. The public is served by a system based on the advancement of civil servants solely on merit, efficiency and honest public service. H.R. 8617 would remove these mutual safeguards and open the Federal bu-

reaucracy to political manipulation and abuse of potentially staggering proportions:

Officials and employees of the Internal Revenue Service could spend their evenings working in political campaigns, a fundraiser, or in other capacities while during their days they processed, audited, and ruled upon returns filed in good faith by citizens who trust the integrity and fairness of the tax system.

FBI agents investigating alleged illegal activities could simultaneously be working for candidates for political office.

Customs officials, the post office, and other agencies once renowned for their close political ties would easily revert to their former condition while the Immigration Service, the Census Bureau, and countless other regulatory, grant-making, and law enforcement agencies and bureaus could be staffed with candidates, managers, workers, and fundraisers of major political parties.

H.R. 8617 SHOULD BE DEFEATED

H.R. 8617 is a giant step backward. If enacted, it will have a most corrosive effect, for it will inevitably lead to political favoritism. Our present merit system will then return to the old spoils system.

At a time when the American people already hold their Government in such low esteem, any action by Congress which would further lower the people's confidence in that Government would be a grave disservice to the Nation. We must preserve the nonpartisan integrity and impartiality of the public service and its employees. H.R. 8617 would do just the opposite and should be defeated.

I want to commend and pay tribute at this time to the various agencies and organizations which are opposing H.R. 8617. Their enlightened opposition to this bill deserves our praise and encouragement. Among these groups are: the U.S. Civil Service Commission, National Federation of Federal Employees, Comptroller General, Office of Management and Budget, Internal Revenue Service, National Civil Service League, Federal Executive Institute Alumni Association, Organization of Professional Employees of the U.S. Department of Agriculture, Standing Committee on Public Management and Machinery of Government of the National Academy of Public Administration, the U.S. Postal Service.

The Nation's press has been most helpful in focusing the spotlight on the legislative efforts to scuttle the Hatch Act. Numerous editorials have appeared in newspapers and magazines to oppose H.R. 8617. We who are on the firing line of this battle deeply appreciate their support.

Mr. President, I ask unanimous consent to have printed in the RECORD—at the end of my remarks—the following materials in this order: a partial listing of agencies and organizations opposed to H.R. 8617; a partial listing of editorials and articles in opposition to H.R. 8617; a statement dated February 1976 captioned "H.R. 8617: A Bill to Scuttle the Hatch Act"; a number of editorials and articles on the Hatch Act which have appeared in the Nation's press; and the text of the minority views on H.R. 8617.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. FONG. In summary, I reiterate that, to allow Federal employees virtually unlimited partisan political activity would:

First, be a great disservice to the 2.8 million Federal civil service employees;

Second, inevitably introduce partisan consideration into the administration of Federal programs;

Third, seriously undermine public confidence in the integrity of Government operations;

Fourth, compromise, in the public's eye, Federal employees who actively participate in partisan politics;

Fifth, detract from the efficient administration of the public business;

Sixth, make employees vulnerable to indirect and subtle influences and coercion to support political parties or individuals;

Seventh, inject political consideration in promotions, decisions, job assignments, and similar actions;

Eighth, adversely affect employee morale and efficiency;

Ninth, step backward 70 years to 1907 before President Roosevelt barred political management and campaigning of Federal employees;

Tenth, eventually emasculate the Hatch Act;

Eleventh, eventually return to the spoils system; and

Twelfth, ultimately destroy the merit system in the Federal Government.

Mr. FONG. Mr. President, I yield the floor.

EXHIBIT 1

PARTIAL LISTING OF AGENCIES AND ORGANIZATIONS OPPOSED TO H.R. 8617, FEDERAL EMPLOYEES' POLITICAL ACTIVITIES BILL

U. S. Civil Service Commission,
National Federation of Federal Employees,
Comptroller General,
Office of Management and Budget,
Internal Revenue Service,
National Civil Service League,
Federal Executive Institute Alumni Association,

Organization of Professional Employees of the U.S. Department of Agriculture,

Standing Committee on Public Management and Machinery of Government, National Academy of Public Administration,
U.S. Postal Service.

PARTIAL LISTING OF EDITORIALS AND ARTICLES IN OPPOSITION TO H.R. 8617, FEDERAL EMPLOYEES' POLITICAL ACTIVITIES BILL

"Potential Flaw Shown in Hatch Proposal", by John Cramer, from the Washington Star, November 10, 1975.

"Crippling the Hatch Act?", by Kevin P. Phillips, from King Features Syndicate, October 1, 1975.

"Downing the Hatch Act", editorial from the Washington Star, October 23, 1975.

"Second Class Nonsense" by Howard Fleger, from U. S. News & World Report, September 22, 1975.

"Keep the Hatch Act", editorial from the Richmond Va. Times-Dispatch, reprinted in the Christian Science Monitor, June 16, 1975.

"Save the Hatch Act", editorial from the Chicago Tribune, August 1, 1975.

"Will the 'Reformers' Unhatch Hatch Act?" by Michael Killian, from the Chicago Tribune, October 14, 1975.

"Hatching Trouble", by Nat Kelly, from Roll Call, November 6, 1975.

"Easing the Hatch Act and Promotion Politics" by Joseph Young, from the Washington Star, December 16, 1975.

"It Is Up to the Senate to Save the Hatch Act", editorial from the Philadelphia Inquirer, February 22, 1976.

"The Hatch Act Hurdle," editorial from the St. Louis Globe-Democrat, December 30, 1975.

H.R. 8617: A BILL TO SCUTTLE THE HATCH ACT

The proper regulation of government employees' political activities has been a subject of debate since the meeting of the first Congress in 1791. The present Hatch Act was enacted in 1939 after a Senate investigation documented numerous cases of political coercion and the solicitation of financial contributions from public employees.

For the past 36 years, the Hatch Act has wisely restricted partisan political activities by employees in the Federal Civil Service merit system. Now, however, a strong drive—promoted primarily by big labor union leaders—is underway to pressure Congress to repeal the protective features of the Hatch Act.

H.R. 8617 was passed by the House of Representatives on October 21, by a vote of 288-119, 17 votes short of the total needed to sustain the anticipated veto. The bill is now before the Senate in almost the same version as passed by the House.

PERMITTED ACTIVITIES UNDER THE CURRENT HATCH ACT

Federal employees are now permitted a wide range of activities. They may—

1. register and vote in any election;
2. express opinion as an individual privately and publicly on political subjects and candidates, display a political picture, sticker, badge or button;
3. make a financial contribution to a political party or organization.
4. participate in the *nonpartisan* activities of a civic, community, social, labor or pro-

professional organization, or of a similar organization;

5. be a member of a political party or other political organization and participate in its activities to the extent consistent with law;

6. attend a political convention, rally, fund-raising function or other political gathering;

7. sign a political petition as an individual;

8. take an active part, as an independent candidate, or in support of an independent candidate, in a nonpartisan election. In specified municipalities having high concentrations of Federal employees (41 in Maryland, 11 in Virginia, 13 in other states) employees may be independent candidates for and serve in elective office, and as independents may take an active part in political management and campaigns in connection with partisan elections for local offices of the municipality or political subdivision;

9. be politically active in connection with a question not specifically identified with a political party (constitutional amendment, referendum, etc.);

10. serve as an election judge or clerk or in a similar position to perform nonpartisan duties;

11. otherwise participate fully in public affairs, except as prohibited by law, in a manner which does not materially compromise efficiency or integrity of an employee or the neutrality, efficiency or integrity of the agency.

PROHIBITED ACTIVITIES UNDER THE CURRENT HATCH ACT

Federal employees may not—

1. use official authority or influence for the purpose of interfering with or affecting the result of an election;

2. take an active part in political management or in a political campaign of a partisan candidate for public office or political party office;

3. serve as an officer of a political party, a member of a National, State or local committee of a political party, or an officer or member of a committee of a partisan political club, or be a candidate for any of these positions, organize or reorganize a political party organization or club;

4. directly or indirectly solicit, receive, collect, handle, disburse or account for assessments, contributions or other funds for a political organization;

5. organize, sell tickets to, promote or actively participate in a fund raising activity of a partisan candidate, political party or club;

6. become a partisan candidate for or campaign for an elective public office;

7. solicit votes in support of or in opposition to a partisan candidate for public office of political party office;

8. act as recorder, watcher, challenger, or similar officer at the polls on behalf of a political party or partisan candidate, drive voters to the polls on behalf of a political party or partisan candidate;

9. endorse or oppose a partisan candidate for public office or political party office in a political advertisement, a broadcast, campaign literature or similar material;

10. address a convention, caucus, rally or similar gathering of a political party in support of or in opposition to a partisan candidate for public or political party office;

11. serve as a delegate, alternative or proxy to a political party convention;

12. initiate or circulate a partisan nominating petition.

(Source: Code of Federal Regulations, Title 5, Part 733.)

IMPACT OF H.R. 8617 AS PASSED BY THE HOUSE AND REPORTED BY SENATE COMMITTEE

The current provisions of the Hatch Act—what employees may and may not do—are totally replaced by the provisions of this bill.

The new language specifies only what employees may not do, and allows all other political activities.

H.R. 8617 specifically prohibits an employee from:

Using or attempting to use directly or indirectly official authority or influence—

To interfere with or affect the result of any election;

To intimidate, threaten, coerce, command or influence an individual to vote or not to vote in any election, to give or withhold any political contribution, or to engage in any

form of political activity whether or not prohibited by law.

Giving or offering a political contribution to any individual either to vote or not to vote or to vote for or against any candidate or measure in any election.

Soliciting, accepting, or receiving a political contribution to vote or not to vote or to vote for or against any candidate or measure.

Knowingly giving or handing over a political contribution to a superior.

Knowingly soliciting, accepting or receiving a political contribution from a subordinate or in any room or building used for official duties of a U.S. government employee or office-holder.

Engaging in political activity while on duty, while wearing uniform or official insignia, or in any room or building used for official government duties.

All other currently prohibited activities would be permitted under H.R. 8617 except for using official authority or influence to interfere with or affect the outcome of elections. Everything else now banned would be permitted—running for partisan office, managing election campaigns, fund raising, soliciting votes, endorsing candidates, addressing political gatherings and all other items listed above under current Hatch Act prohibitions.

CANDIDATES' LEAVE

H.R. 8617 provides that employees who are candidates for full-time elective office must take 90-days leave with or without pay prior to the election. (Incumbent officials are exempted from this provision.)

COVERAGE

H.R. 8617 includes all Executive agency employees, including President and Vice President, civil service, postal service. Excludes armed services. (President, Vice President, individuals paid from White House appropriations, paid from funds to enable the

Vice President to assist the President, or on special assignment to the White House, D.C. Mayor and City Council are excluded from the ban on political activities while on duty or in official rooms or buildings.)

BOARD ON POLITICAL ACTIVITIES OF FEDERAL EMPLOYEES

A presidentially-appointed three-member, part-time board—instead of the Civil Service Commission—is established to hear and decide on alleged violations.

INVESTIGATIONS

The Civil Service Commission is required to investigate reports and allegations of prohibited activities (90-day time limit).

PENALTIES

The Board may impose penalties of dismissal from office, suspension without pay, or lesser penalties at its discretion, according to the nature of the actual violation. (Present penalty: dismissal or suspension for not less than 30 days).

EDUCATIONAL PROGRAM

The Civil Service Commission shall establish and conduct a continuing program to inform all employees of their political rights and of prohibited activities.

Each employee shall be informed individually in writing at least once a year but not later than 60 days before the earliest primary or general election for State or Federal elective office.

[From the Philadelphia Inquirer, Feb. 22, 1976]

IT IS UP TO THE SENATE TO SAVE THE HATCH ACT

For more than 35 years, the main categories of federal government employees—now numbering almost 3 million—have been protected from political exploitation by a law known as the Hatch Act. The taxpayers of the U. S. have been, coincidentally, spared the burdens of the sort of patronage abuses which the Hatch Act has prevented. All that is in peril.

The Hatch Act is no simple measure; it wasn't when it was drafted and fought through legislative thickets by reform Sen. Carl Hatch in 1940; it is less so today, having been compounded and elaborated by some 3,000 regulations and administrative rulings.

But the heart of the law is uncomplicated, and it is strong. It prohibits federal civil servants from managing or running in partisan political campaigns. It thus, more importantly, prevents those civil servants' bosses from requiring such behavior as an implicit condition of employment, promotion or other favors or conveniences.

Since its inception, the Hatch Act and its principle have been attacked vigorously. The strongest current force arrayed against it is the labor movement—which long has argued that the Hatch Act interferes with federal employees' freedom of speech and association.

Led on by that spurious cry—and by the inviting prospect of instant recruitment of 3 million political patronage workers—the House of Representatives last October passed a bill, H.R. 8617, which would end the Hatch Act protections.

The bill's proponents argue mightily that it is not really a repeal of the Hatch Act at all, but a sort of benevolent reform measure which would give affected civil servants the freedom to "express themselves" politically, while relying on new "prohibitions" against political exploitation.

Nonsense. H.R. 8617 would, purely and simply, make federal civil servants direct political participants, for the first time in more than 35 years. And anyone who argues that once it is permissible, for them to politic, moneyraise and otherwise labor in the electioneering vineyards that somehow their bosses won't ask them to—well, anyone who argues that to you is blowing smoke up your leg.

To its discredit the Senate Post Office and Civil Service Committee has sent to the Senate floor a bill virtually identical to H.R. 8617. If it passes, and there is great pressure being brought for just that, it would be the end of the Hatch Act—and the beginning of a patronage system unimagined since Ulysses S. Grant's more power-lustful dreams.

[From the St. Louis Globe-Democrat, Dec. 30, 1975]

THE HATCH ACT HURDLE

On the heels of his recent veto tussles, President Ford faces another major clash with Congress over the attempt to scuttle the Hatch Act, which has kept federal employees out of partisan politics since its enactment in 1939.

Last October the House defied Administration opposition to changing the law and passed amendments by a commanding vote of 288 to 119. The Senate is expected to follow through early in the new year. Thus the stage will be set for another epic confrontation between Congress and the White House.

Again organized labor bosses, but by no means independent government unions, are behind the drive to weaken the present law.

Chief sponsor of the House bill to water down the Hatch Act was St. Louisan William L. Clay, whose own use of federal employees has been under scrutiny. While Clay claims his bill is "a milestone in achieving full and complete suffrage for federal employees," spokesmen for large blocs of federal workers do not see it that way.

Robert L. White, president of the National Alliance of Postal and Federal Employees, fears that lifting restrictions on political activity will result in job discrimination. "Speaking as the head of a black union," said White, "we have to be careful about removing any restrictions that might bring about any more discrimination."

Natan T. Wolkomir, president of the National Federation of Federal Employees, predicts "a terrific influx of abuses" if the Hatch Act is discarded. He sees the push for passage from organized labor as "nothing more than the old AFL-CIO pitch for muscle and power."

The final version of the bill that is expected to pass the Senate and go to the President would permit nearly 2.8 million civil service employees to be active in party politics, thereby exposing them to pressures from all sides.

It would permit federal employees to run for full-time elective office. While the original Clay proposal would have allowed government workers to run for public office without taking unpaid leave from their jobs, it is anticipated that the final version would require any such prospective candidates to take leave 90 days before any elections in which they were involved.

The liberalized bill would permit federal workers to campaign actively in behalf of party-backed candidates, while presumably banning them from politicking during working hours or on government property.

The abuses that would be opened up under such an arrangement are impossible to enumerate. Complaints of too much politicking by government workers led to the passage of the Hatch Act in 1939, and for good reason.

The Civil Service Commission is strongly opposed to changing the law, arguing correctly that corruption cannot be prevented, once the doors to political activity are opened.

The public needs to be protected from the ever-constant danger that government employees would be intimidated into lending their time and support to candidates their bosses favored.

If the Hatch Act is diluted there can be no assurances that promotions and jobs will not be dependent upon the recipient backing the right political horse.

If the Senate acts as expected, President Ford will be on a collision course again with the forces of big union bosses and a Congress that has become subservient to them.

President Ford, facing this hurdle in an election year, will have no choice but to exercise his veto. The country cannot afford a return to the worst days of corruption in government by invitation.

[From the Washington Star, Oct. 23, 1975]

DOWNING THE HATCH ACT

To hear some congressmen and union leaders tell it, there is great walling and gnashing of teeth among federal employees over the constraints of the Hatch Act. Unfortunately, a majority of the House has bought the argument that these down-trodden workers must be liberated.

Before this thing goes further, we wish a referendum could be taken among the some 2.5 million federal workers on how they really feel about the Hatch Act. We have no doubt that an overwhelming majority would tell their would-be "liberators" to leave them and the Hatch Act alone.

The Hatch Act was enacted in 1939 to protect federal workers from political coercion and to prevent the federal service from becoming a political machine. Besides making it illegal to use "official authority or influence to coerce the political action" of federal employees, it bars the employees from soliciting campaign funds from other federal workers, from using their offices for political purposes, from taking an active part in partisan campaign management and from running for office on a partisan ticket.

The Supreme Court upheld the constitutionality of the act in 1973. The court said it agreed with Congress "that the rapidly expanding government work force should not

be employed to build a powerful invincible and perhaps corrupt political machine."

"The 1936 and 1938 campaigns convinced Congress," the court said, "that these dangers were sufficiently real that substantial barriers should be raised against the party in power—or the party out of power, for that matter—using the thousands or hundreds of thousands of federal employees, paid for at public expense, to man its political structure and political campaigns." Since then the thousands of federal employees have become millions and the effect of turning such a multitude into a political machine would be even more far reaching.

Who is behind this plan to un-Hatch the Federal workers? No doubt some of its sponsors in Congress truly feel that public employees are "second-class" citizens being denied the opportunity to participate more fully in the political process. But the main thrust is coming from union leaders, who feel that the Hatch Act hampers their efforts to turn the federal bureaucracy into a giant union, and who want to use the federal work force to further the political aims of union leadership.

Removing Hatch Act restrictions against political activity is a major goal of the AFL-CIO, whose lobbyists were buttonholing representatives outside the chamber the other day before the House voted 288-119 for a wholesale watering down of the act.

We hope the Senate will see the folly of returning the federal service to a "spoils" system. Surely members of Congress are aware that there is no groundswell among federal workers to get rid of the protection the Hatch Act provides them.

[From U.S. News & World Report,
Sept. 22, 1975]

SECOND-CLASS NONSENSE

(By Howard Fieger)

As often occurs before a presidential election campaign, Congress is being asked to repeal, or soften, the Hatch Act.

In case you've forgotten, that is a law making it illegal for Government employees to take an active role in political campaigns, to ring doorbells, raise money or rally support for any party or candidate.

Advocates of repeal—they include politically active unions—claim now, as they have in the past, that the Act, which dates back to 1939, puts strictures on the freedom of federal employees; that it relegates them to the status of second-class citizens.

This is plain nonsense.

Government workers have the same right to register and vote as anyone else has.

They are free to express their political preferences and to support the candidate of their choice with cash if they want.

They can be—and usually are—as politically minded and outspoken as the next person. Their franchise is unfettered. Anyone who thinks there is no politicking among Civil Service employees is naive.

Nobody argues that the Hatch Act is perfect. But it does effectively prevent that which it was designed to prevent: It makes certain that no candidate or party can convert the huge federal bureaucracy into a political machine.

The Act has sheltered the rank and file from any spoils system of patronage rewards for the party faithful. No office holder can go through the Government hiring and firing at will on the basis of politics. No one can tell Civil Service employees how to vote and keep them in line with threats of payday reprisals.

They cannot be coerced into party work. They cannot perform the nuts-and-bolts jobs of a campaign such as soliciting funds, manning headquarters telephones or serving as chauffeurs to ferry voters to the polls on behalf of any ticket.

Does this make them second-class citizens? Hardly. The odds are that those public servants who are sincerely interested in Government performance—and that means the vast majority of them—welcome the shield that stands between them and party affairs.

It was a fear the federal payrolls would be used to perpetuate political control that produced the law in the first place.

The U.S. Supreme Court, in upholding the constitutionality of the Hatch Act two years ago, said Congress had concluded when it passed the original "that the rapidly expanding Government work force should not be employed to build a powerful, invincible and perhaps corrupt political machine."

"The experience of the 1936 and 1938 campaigns convinced Congress that these dangers were sufficiently real that substantial barriers should be raised against the party in power—or the party out of power, for that matter—using the thousands of hundreds of thousands of federal employees, paid for at public expense, to man its political structure and political campaigns."

"A related concern, and this remains as important as any other, was to further serve the goal that employment and advancement in the Government service not depend on political performance, and at the same time to make sure that Government employees would be free from pressure and from express or tacit invitation to vote in a certain way or perform political chores in order to curry favor with their superiors rather than to act out of their own beliefs."

Congress felt safeguards against politicizing the bureaucracy were prudent back when federal employees were counted in "the hundreds of thousands."

It is difficult to follow the reasoning of those who argue such insurance is no longer needed—now that the number of Government workers (not counting the military) has grown to more than 2.5 million.

[From the Richmond (Va.) Times-Dispatch
June 16, 1975]

KEEP THE HATCH ACT

Federal employee unions, already enjoying the muscle power of growing membership and increased militancy, have set their sights on a new power goal: repeal of the Hatch Act.

The Hatch Act, passed by Congress in 1939, prohibits federal workers from actively participating in partisan politics, such as running for political office (except as an independent), campaigning for a political candidate or raising money for a political

party. It does not prevent an employee from voting, expressing his political opinions both privately and publicly, contributing money to a political campaign, or displaying a political picture, sticker, badge or button.

But the public employe unions, and their supporters in Congress, are not satisfied with the law now on the books. They want federal workers to be able to jump headlong into partisan politics and to use their formidable power to get into office the candidates of their choosing.

The danger in repeal is not all from below—that is, from the worker level. A major purpose of the passage of the Hatch Act was to thwart government officials from bringing political pressure on government employees.

The AFL-CIO is putting its brawn behind Hatch Act repeal, but Nathan T. Wolkomir, president of the relatively small (118,000 members) National Federation of Federal Employees, sees the threat that repeal would bring. Referring to the alleged plan by Frederic V. Malek, an aide to former President Richard Nixon, to politicize the civil service, Wolkomir told a congressional committee that repeal would open the bureaucracy to "a terrific influx of abuses. It would end up with what I call a Frederic Malek-type takeover of the federal government through political pressures." He declared that the AFL-CIO's effort for repeal "is nothing more than the old AFL-CIO pitch for muscle and power."

Letter carriers, who, along with other postal workers, are in the forefront of the repeal fight, unsuccessfully challenged the Hatch Act in a case decided by the U.S. Supreme Court on June 28, 1973. The court, with the three-man liberal bloc dissenting, upheld the law as an entirely constitutional congressional act. . . .

One reason for enactment of the Hatch Act in 1939, the Supreme Court said, "was the conviction that the rapidly expanding government work force should not be employed to build a powerful, invincible and perhaps corrupt political machine. The experience of the 1936 and 1938 campaigns convinced Congress that these dangers were sufficiently real that substantial barriers should be raised against the party in power—or the party out of power for that matter—using the thousands or hundreds of thousands of federal employees, paid for at public expense, to man its political structure and political campaigns."

So there are two excellent reasons for retaining the Hatch Act: (1) to protect the public from the possible virtual takeover of the government by federal employees, and (2) to protect the public from the political manipulation of the huge federal work force by Federal officials.—Richmond (Virginia) Times' Dispatch.

MINORITY VIEWS ON H.R. 8617

The legislation is labeled by its proponents as a measure to "restore" the "rights" of Federal civilian and Postal Service employees to participate in this nation's "political processes."

What it would in fact do, however, is to open up the entire Federal government to partisan politics by Federal employees and

concentrate excessive political power in the hands of their leaders. It would cripple and emasculate the Hatch Act—the cornerstone of the merit system—which has served this nation so well in banning partisan politics from the merit system and in shielding Civil Service workers from the pressures and threats of politicians.

H.R. 8617 is a giant step backward. If enacted, it will have a most corrosive and erosive effect for it will inevitably lead to political favoritism. Our present merit system will then return to the spoils system of the pre-Hatch Act period.

At a time when the American people already hold their government in such low esteem, any action by the Congress which would further lower the people's confidence in that government would be a grave disservice to the nation. We must strive to preserve the nonpartisan integrity and impartiality of the public service and its employees. H.R. 8617 would do just the opposite and should be defeated.

WHY THE HATCH ACT WAS ENACTED

The Hatch Act was enacted into law in 1939 amidst a climate of political corruption in the Federal workforce. Under the New Deal, the Works Progress Administration (WPA) funded wholly or partially over 3 million public works jobs in areas of high unemployment. Public indignation grew over reports of widespread financial solicitation by Democratic Party officials from WPA workers as a condition of continued WPA employment, salary advancement, and favorable job assignment.

As a result of these allegations of political corruption, the Senate created a special investigating committee headed by Senator Morris Sheppard of Texas. The Sheppard Committee's report of January 3, 1939, contained numerous documented cases of political coercion that occurred in 10 states. Committee investigators obtained affidavits from WPA workers which showed extensive solicitation of financial contributions from WPA workers by WPA supervisors closely associated with local political organizations which, in turn, were affiliated with the National Democratic Party.

Continued employment on WPA projects, as well as promotions and favorable work assignments, were often contingent upon direct financial contributions to local party organizations or the purchase of tickets to various fund-raising functions.

In Kentucky, for example, the committee found that \$70,000 had been raised for the Governor's campaign from State employees whose salaries had been partly or wholly derived from funds paid by the U.S. Treasury, and that \$24,000 had been raised for a Senator's campaign from WPA employees and from other State employees receiving Federal money.

The committee found particular abuses by administrative personnel in the WPA in Kentucky; specifically, they had made a systematic canvass of certified WPA workers, that workers had been hired and fired on the basis of political affiliation, and that WPA workers had been solicited for political contributions.

Based on these findings, the Sheppard

Committee recommended that Congress pass legislation to prohibit the political coercion of all Federal employees. The spectacular evidence of patronage politics prompted Congress to respond quickly and the Hatch Act was enacted in the same year.

HATCH ACT ASSURES IMPARTIAL GOVERNMENT

The law was designed to protect Federal employees from being coerced to participate in partisan political activity such as fund raising, campaigning, and soliciting votes. Further, the statute made it illegal to use "official authority or influence to coerce the political action" of Federal employees. Federal employees were insulated from becoming pawns of any political party, thus insuring that the laws of the land would be administered impartially by employees who owed their appointments and tenure in the Federal Government only to the merit system and not to any partisan political party.

This was the purpose and intent of the law. It has served both employees and the public well.

HATCH ACT IS MORE NEEDED TODAY

Now, 36 years later, proponents of H.R. 8617 seek to remove these time-tested protections of Federal employees. We in the Congress are being asked to ignore the sordid political past which prompted the enactment of the original law.

This is a mistake. The proponents of this wholesale change in the law argue that times have changed since 1939, that employees are more sophisticated, and, therefore, repeal of the important Hatch Act provisions is necessary:

Times have changed—but let us examine to what extent they have changed.

For example, it is estimated that in 1939, there were 920,000 Federal employees as opposed to 2.8 million today; the total budget in 1940 was \$9.5 billion as opposed to \$324 billion in 1975; public assistance—welfare and government payment to individuals—totaled \$1.5 billion in 1940 while the estimate in 1975 is close to \$147 billion; and the average salary of a Federal employee in 1939 was \$1,871 as opposed to \$14,480 today.

Indeed, times have changed. The Federal government is vastly larger than it was in 1939 when the Hatch Act became law—it employs three times more workers and has a budget 34 times larger. Accordingly, the potential for abuses in the Civil Service merit system is far greater today than it was 36 years ago.

The question is, has human behavior changed to the extent that employees are no longer vulnerable to coercion—subtle or otherwise—from ambitious partisan political employees who hold important positions in government? We do not think so. In fact, the Hatch Act is more necessary today than when it was first enacted into law.

LEGISLATION WILL NOT STOP COERCION

If Federal employees have become more sophisticated since the 1930's, they have also become more cynical. In 1967, a full 25 percent flatly told the Survey Research Center of the University of Michigan—an impartial, widely respected professional organization—that they would not report the illegal activities of coworkers or supervisors.

In an increasingly sophisticated and cynical post-Watergate atmosphere, it becomes more and more unlikely that such subtle political activities as indirect coercion of employees will be reported.

Though a few union leaders boasted in House subcommittee hearings this year that their organizations could combat coercion in the public sector as successfully as it has been done in the private sector, subtle coercion is extremely difficult to prove. It is unlikely that even the most strenuous of union efforts would curb indirect coercion—the subtle pressure that any Federal employee would inevitably feel were his supervisor a politician. Furthermore, unions would not be able to assist the hundreds of thousands of Federal employees who are not union members. Thus, Federal employees, stripped of their protection, will be “sitting ducks.”

RANK AND FILE OPPOSE CHANGE

The impetus for this bill does not come from Federal employees themselves, who will lose most by the passage of this bill.

Given a choice between the Hatch Act and H.R. 8617, employees would prefer the Hatch Act. Congressmen representing the nation's second and third largest civil servant constituencies report that their own surveys and mail show an overwhelming proportion of the rank and file Civil Service employees do not want the bill. Of 20,000 individuals who responded to a questionnaire which Representative Joseph L. Fisher (D.-Va.) mailed to his Northern Virginia constituents (including one-third to 40 percent who were civil servants), 59 percent expressed opposition to any change in the Hatch Act. His mail indicated that Civil Service employees who wanted the status quo outnumbered others eight or ten to one.

Representative Gilbert Gude (R.-Md.) told the Senate Post Office and Civil Service Committee: “I think his (Congressman Fisher's) poll clearly shows what I felt was the case in my district and what I think is the case generally with Civil Service employees across the country.”

Still another House Member, Representative Elizabeth Holtzman (D.-N.Y.), said the results of a questionnaire she sent to her constituents showed the vote was two to one against weakening the Hatch Act. “I think that my constituents accurately perceive the need for continued protection to the public and the Federal Civil Service afforded by much of the Hatch Act,” she commented. Her incisive remarks on H.R. 8617 (*Congressional Record*, November 18, 1975, Pages H11390-91) underscore the dangers in partisan political activities if engaged in by Federal employees.

Clayton Jones, President of the Federal Executive Institute Alumni Association, reporting on the results of his organization's questionnaire, said that out of 3,000 career Civil Service employees who were polled by mail, only two individuals expressed support for legislation to change the Hatch Act.

In its 1967 study, the Survey Research Center of the University of Michigan found strong sentiment among Federal employees for keeping the Hatch Act unchanged. In surveying the attitudes of Federal employees toward the Hatch Act, 14 categories of re-

sponses were allowed. The category which ranked number one with the highest response was: “The Hatch Act should remain as is; do not favor changes.” Obviously, Civil Service employees do not want to throw out the present Hatch Act.

Joseph Young, the veteran columnist of the Washington Star who has covered the “government beat” for more than 25 years made this observation:

“Federal and postal employee union leaders are all in favor of overhauling the law restricting the political activities of government workers, but it's doubtful that most employees are.

“The unions favor overhaul because it would increase their clout with Congress and the political party in power in the White House.

“But it would mean the end of the merit system as we know it today.

“The attacks on the merit system that occurred during the Nixon administration would be mere child's play compared to what would happen if the Hatch Act were radically changed.”

Nathan T. Wolkomir, President of the largest independent union of career employees—the widely respected National Federation of Federal Employees—said:

“There is no question in my mind that this a further attempt by the AFL-CIO to have terrific political impact on the Hill.”

And John McCart, head of the AFL-CIO's public-employee section, agrees:

“I suppose that to the extent we make our people more aware of the political process, you could say that we could acquire more political clout. But what's wrong with that? Our union's whole history is related to politics.”

And so, if the AFL-CIO has its way, union will soon be engaged in exacting political favors from union members in the Federal service.

Our Nation's history, though, shows that “politics” should have no place in the impartial administration of Federal laws—no place in the Civil Service—regardless of the AFL-CIO desire to open the public service to unrestricted political activity.

Employees do not want this or any other change in the Hatch Act. Mr. Wolkomir testified that his union, the NFFE, conducted a poll of its members which showed 89 percent expressing strong support for continuing the Act “as is.” In its 1974 convention, NFFE unanimously adopted a resolution “that the NFFE continue to vigorously oppose efforts to weaken the protection provided by the Hatch Act.

EVEN THE PRESENT PROVISIONS ARE VIOLATED

If the incentive to engage in abuses of the merit system were sufficiently great, even the most stringent enforcement mechanism conceivably would not deter such abuses. Even in the absence of powerful incentives, some abuses of the merit system appear inevitable.

More than a few witnesses testifying before the House panel considered this legislation, complained of discrimination in appointments and promotions, discrimination against minorities, and favoritism toward members of fraternal organizations. Since these witnesses were for the most part re-

sponsible individuals, elected to posts of some importance, their statements cannot be dismissed as puffery or paranoia. The conclusion that must be drawn is that there is some abuse of the merit system.

Even the Hatch Act, with its sweeping proscriptions against political activity and its stiff mandatory penalties, is persistently violated.

A Hatch Act violation which made the front pages in 1971 was the case of six officials of the General Services Administration who were charged with soliciting subordinates to buy tickets to a "Salute to the President Dinner." The Civil Service Commission found the six, all Civil Service employees, had violated the Hatch Act.

The Survey Research Center found that at least 1.5 percent of all Federal employees have been asked by their supervisors to contribute money to political campaigns, while another 1.2 percent have been requested to participate in political activities in violation of the law.

Some would claim this evidence demonstrates that the Hatch Act prohibitions against partisan politicking are not working and should be repealed. Little thought is needed to see that repeal would only worsen the situation. Repeal the prohibitions and abuses becomes more profitable; if it is more profitable, more abuses will follow.

FEDERAL WORKERS NOT "SECOND-CLASS CITIZENS"

Proponents of H.R. 8617 have advanced the specious claim that the Hatch Act reduces Federal employees to the status of "second-class citizens," depriving them of their First Amendment rights of free speech and free association.

The right to participate in political activities is not, and never has been, absolute. In *U.S. Civil Service Commission v. National Association of Letter Carriers*, the Supreme Court recently sustained the constitutionality of that provision in title 5, United States Code, which prohibits Federal employees from taking an active part in political management or in political campaigns, the very provision H.R. 8617 would repeal.

The Court held that:

"A major thesis of the Hatch Act is that to serve this great end of government—the impartial execution of the laws—it is essential that Federal employees not, for example, take formal positions in political parties, not undertake to play substantial roles in partisan political campaigns and not run for office on partisan political tickets. Forbidding activities like these will reduce the hazards to fair and effective government.

"There is another consideration in this judgment: It is not only important that the government and its employees in fact avoid practicing political justice, but it is also critical that they appear to the public to be avoiding it, if confidence in the system of representative government is not to be eroded to a disastrous extent."

The Supreme Court has repeatedly held that the interests of society must be balanced against the interests of the individual. In this case, it is reasonable, and the lesson of history shows it is necessary, to curtail the political activities of Federal employees

in the interests of society and also in the interests of employees. The Fisher poll shows that Federal employees know this. Impartial administration of the law without regard to personal convictions or political affiliations is required for a fair and efficient government.

Even if intensive involvement in politics does not taint an employee's administration of the law (an unlikely situation), it would certainly taint the public's perception of government affairs. More than a few citizens, one suspects, would be less willing to comply voluntarily with Internal Revenue Service regulations, were the Regional Director of the Revenue Service also the manager of a governor's campaign.

Moreover, the interests of the vast majority of Federal employees, those with no burning desire to become involved in partisan affairs, seem to require that restraints be placed upon the ambitions of their more politically inclined co-workers.

POLITICAL RIGHTS OF FEDERAL EMPLOYEES

Nor are the First Amendment rights of Federal employees impaired. While there are

prohibited activities under the Hatch Act, there are at least as many permissible activities. An employee may register and vote in any election; express his opinion privately and publicly on political subjects and candidates; display a political picture, sticker, badge, or button; participate in the nonpartisan activities of a civic, community, social, labor, or professional organization; be a member of a political party and participate in its activities to the extent consistent with the law; attend a political convention, rally, fund-raising function, or other political gathering, sign a petition as an individual; be politically active in connection with a question not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance or any other question or issue of a similar character; and serve as an election judge or clerk, or in a similar position to perform nonpartisan duties as prescribed by State or local law.

In addition, the Civil Service Commission has determined that in certain municipalities in Maryland and Virginia in the vicinity of the District of Columbia, or a municipality in which the majority of voters are employed by the Government of the United States, it is in the domestic interest of employees for them to participate in local elections. In these designated municipalities, an employee is permitted to run in a partisan election if he runs as an independent candidate.

Employees who reside in areas which do not qualify under the criteria above, may also run for public office and engage in political activity, but only in a nonpartisan election.

The Hatch Act does not deny a citizen his right to manage a political campaign or to run for partisan office. Nor does it deny the qualified citizen the privilege of a secure, well-paying post in the Civil Service. The act merely recognizes that one cannot administer the law impartially while advocating a partisan platform, that one has no inherent right under the Constitution to be a Federal employee and a political activist at the same time.

Nathan Wolkomir, President of the National Federation of Federal Employees, has capsuled the issue more bluntly:

"Claims that the Hatch Act makes 'second-class citizens' of Federal employees is just so much eyewash. Federal employees are not denied reasonable and appropriate participation in the political process. Oddly, many of those who moan most loudly about this moth-eaten cliché fail to exercise the basic and most elementary action of a citizen, namely, to register and vote."

Robert E. Hampton, Chairman of the U.S. Civil Service Commission, testified before the Senate Post Office and Civil Service Committee that a record number of people in recent years have expressed interest in Federal employment and most of them were well aware of the Hatch Act restrictions on the political activity if they accepted a Federal job. Evidently, these individuals don't think the Hatch Act makes them "second-class citizens," Chairman Hampton said, and the political restrictions are not a deterrent to their seeking Federal employment.

POSTAL WORKER, VERSUS SEARS ROEBUCK EMPLOYEE

The question has been raised as to how a Postal employee differs from an employee of Sears Roebuck. Why should the political activity of the Postal employee be restricted while that of the Sears employee is not?

There is a major difference between these two types of employees. Government employees, unlike private enterprise employees, are prominently identified with public programs and the impartial implementation of legislation which may have been bitterly contested by partisan forces. Briefly put, the Postal employee (or any Government employee) is a representative of the U.S. Government, not of a political party. His work is of major importance to all citizens.

The Postal employee in particular is the one government employee with whom many people in our country come into contact every day. He is the one who delivers the Social Security check; he is the one who delivers bill payments to small businesses with a critical cash-flow; he is the one who delivers the advertisements for one-day-only sales; he is the one who delivers the political campaign advertisements for parties and candidates. In short, he is a person who is intimately aware of a postal patron's interests and business.

He could, if partisan considerations were involved, engage in a form of coercion by "accidentally" delaying delivery of mail in a way which would benefit his candidate. For example, a political brochure "accidentally" delivered on November 5 is of no value to the candidate who mailed it. And late delivery of a Social Security check can cause real hardship for those dependent upon its prompt arrival.

As set forth above, such actions would have a serious effect not only on the efficient delivery of the mail but also on the public's perception of the manner in which government business is conducted. The public servant would seem to be more an employee of a political party.

Indeed, a Philadelphia official of the National Association of Letter Carriers whose

members, the official points out, deliver mail to every home in America, has been quoted as saying:

"Our people have the ability to meet and contact people that other people don't have. We could be effective if we were unshackled. We do some talking right now, but we're not supposed to."

The Sears employee, on the other hand, is an employee of a private, competitive business. The public does not pay his salary, does not expect him to be impartial, does not look to him to execute public laws and programs, and does not depend on him for the many basic services which are now provided by the government. A dissatisfied Sears customer can always turn to another store.

In regard to government services, such as the Postal Service, however, the "customer" does not have a similar option. It is, therefore, inappropriate to compare a Postal employee with an employee of a private, competitive business.

COERCION DIFFERS FROM DISCRIMINATION

Enforcement of the Hatch Act anti-coercion provisions is an extremely difficult task and cannot in any way be compared with the enforcement of antidiscrimination laws.

Racism is ugly, a social toxin, universally condemned. Political participation is a virtue, a social tonic, as prized by many Americans as racism is abhorred. Discrimination may be documented with the statistician's tools, eradicated with a sweeping directive. Coercion can be established only after exhaustive investigation and painstaking cross-examination, and must be eradicated case by case.

Too, coercion is a far more subtle thing. A vague remark, the wave of an arm, effusive praise, or its sudden absence, is sufficient to influence the activity of a Federal employee properly concerned with his own future. And who can fault him? He is aware that his supervisor, when making an appointment or transfer, may choose one of three equally qualified candidates. Under these circumstances, merit system abuse is almost impossible to establish. As one witness said: Substantiating charges of subtle coercion is "like trying to put your finger on a greasy marble."

Who can demonstrate that one was selected because he contributed generously to a campaign the supervisor managed? That another was passed over because he had once sported a button touting the opposition? And if one candidate for a promotion tells his supervisor, when no one else can hear, that the increased salary will make it much easier for him to pitch in come election time, who will ever know?

Fifty-two percent of Federal employees interviewed by the Survey Research Center felt that "promotion decisions and job assignments would change if Federal employees were allowed to be more active in politics." Few who feel this way would dare attend a fund-raiser for the opposition party, if their supervisor happened to be the State party chairman. And many who ordinarily would not even contribute to a political party might seriously consider putting up posters or driving people to the polls, just to give their boss a hand.

And what about the employee whose union holds one view, and pressures him to actively support it, while his supervisor holds a dif-

ferent view?

Ironically, enforcement of the law merely compounds the problem; if a supervisor who had abused the merit system was not successfully prosecuted, every employee who had ever entertained the notion that partisan activity counts would then be convinced that his darkest suspicions had been correct all along.

PUBLIC PERCEPTION OF IMPARTIAL GOVERNMENT

Even if intensive involvement in politics does not taint a public employee's administration of the law, it would certainly taint the public's perception of government affairs.

Consider the public's perception of government affairs if the following Federal employees were engaged in partisan political activity. The illustrations were cited in the Senate Post Office and Civil Service Committee hearings by Carl P. Goodman, General Counsel of the Civil Service Commission:

"A 'superior' is known to be actively campaigning for candidate X. One of his subordinates, who is generally known to be personally close to the superior, or who is known to be the superior's 'right-hand-man,' but is actually not a superior to the employees, approaches other employees in front of the building, or in a parking lot, or at their residences (H.R. 8617 prohibits fund solicitation in Federal buildings) and solicits contributions for candidate X.

"The solicited employee must decide if it is expedient for them to contribute, being aware of the possibility that the superior may learn whether or not a contribution was made.

"They would also be aware that it would be extremely difficult, if not for all practical purposes impossible, to prove that any particular employee is promoted or passed over for promotion because he made a political contribution, or failed to.

"There is no evidence to indicate that the superior instructed or even suggested to the subordinate that contributions should be solicited * * * unlikely that such evidence could be obtained."

"An employee is aware of a vacancy which would be a promotion for him. He also is aware that the person who will make the selection is actively supporting a particular candidate. Add to that the fact that another employee who will be in competition for the vacancy is also working actively on behalf of the same candidate.

"Our first employee must now make a decision with respect to his own activity. Can he really afford not to also campaign for that candidate? Or can he afford to exercise his 'right' of choice by actively campaigning for the opposition?

"What is at play here is internal coercion—the employee is caught between the proverbial rock and the hard place.

"Today he need not be concerned about making this no-win choice—he is hatched; he is protected."

"How about the employee engaged in political management who suddenly finds that

the opposition candidate is his boss; or worse yet that the candidate he just successfully helped defeat now is boss and is responsible for his promotions, work assignments, leave, etc.?"

"Are all political activists of such pure heart that they can and will completely overlook the fact that subordinates deprived them of elective offices they worked so hard to obtain?"

Still more illustrations can be offered:

If the General Counsel of the Civil Service Commission were known to be an active campaigner and fund-raiser for a political party, who would believe his report as to that party's abuse of the merit system?

What would be the public reaction to an Internal Revenue Service agent who investigates tax fraud, and in the same community solicits campaign funds so he or a friend can run for office?

The Commissioner of the Internal Revenue Service in testimony before the Senate Committee, stated:

"I think the American people would quickly lose confidence in the integrity of an internal revenue system which permitted its employees to be avid political partisans one day and expect them to be perceived the next as wholly non-partisan by both political friends and foes."

The list could go on endlessly: the Federal Prosecutor handling fraud cases; the farm agent distributing cash assistance; the Small Business Administration employees approving or rejecting a loan; the contracting officer and the grant officer whose day-to-day decisions are so very important.

In the Executive Branch as a whole, the public's perception of the equitable, impartial, non-partisan integrity of the system is of major importance.

THE LESSON FROM WATERGATE

Representative Elizabeth Holtzman has emphasized,

"If there is one lesson we should have learned from Watergate, it is that we must strive to reduce, rather than increase, political influence in the Federal law enforcement and investigative agencies. This bill would, instead, authorize and invite the politicizing of the Justice Department, FBI, U.S. Attorney's Offices and Internal Revenue Service, as well as the CIA, National Security Agency and Defense Intelligence Agency. The dangers are two-fold: that law enforcement and investigative powers will be used to serve political ends, and that law enforcement and investigative offices, which should be wholly merit operations, will instead return to the spoils system. In addition, the administration of justice must not only be free of political influence in fact; it must be perceived as fair and impartial as well."

It is significant that in its final report in June, 1974, the Senate Select Committee on Presidential Campaign Activities—the Senate Watergate Committee—recommended that Congress amend the Hatch Act to place all Justice Department officials—including the Attorney General—under its purview. At present, certain Justice Department officials are exempt from Hatch Act coverage. The Watergate committee, however, stated

it believes that all Justice Department officials should administer the nation's laws totally removed from all political considerations.

The Watergate Committee's recommendation to extend the Hatch Act to all Justice Department employees, including the Attorney General, is also in the report of the Watergate Special Prosecution Force issued in October 1975. Deputy Attorney General Harold R. Tyler, Jr., said such an action would add "a certain amount of public confidence."

FALLACIOUS COMPARISON WITH OTHER COUNTRIES

Proponents of H.R. 8617 assert that the United States is the only free world country to so severely restrict the political activities of its government employees.

But compared to Japan, which prohibits all forms of political activity and political expression, with the single exception of the vote, the United States is a paragon of liberalism and tolerance. As one might expect, for the past 30 years Japan has benefited from a strictly professional and scrupulously nonpartisan Civil Service, while the United States has had more than its share of blemishes, particularly at the State and local level.

We do not think the United States should restrict the political activities of its employees to the same degree as Japan. We are two different nations, with different governments, histories, cultures, customs, and legal codes.

If the Civil Service laws of Japan should not serve as a model for the United States, neither should those of Britain, Germany, Canada, France, or any other nation. Aside from the obvious historical differences, our system of checks and balances is fundamentally different from other countries.

Though the differences between the United States and other free world nations are many, the most significant, for our purposes, is this: for every administrative office filled by a political appointee in other countries, dozens are filled with appointees in the United States. This is no flaw in our system of government, but a necessity. The will of the nation, as interpreted by the Chief Executive, could not otherwise be translated into action. But political appointees can undermine the administration of the law as well as promote it, if the partisan pressures they inevitably exert result in the politicization of the Civil Service. No other nation possessing Civil Service is susceptible to this risk.

MAKING THE HATCH ACT CLEARER

Some critics claim that the Hatch Act, which incorporates into statute over 3,000 administrative decisions, is vague and overbroad. The answer to this criticism is that the Federal employee who is determined to participate in politics to the extent permitted by law does not have to spend his weekends in the darkened aisles of vast law libraries, paging through volume after volume of musty Civil Service reports. All the work has been done for him.

Commission determinations are summarized in the Civil Service Regulations, which list

13 permissible and 13 prohibited activities in clear, comprehensible language.

If the regulations are themselves indecipherable—and in the opinion of the Supreme Court, they are not—the appropriate prescription is an editor's pen, not H.R. 8617.

If an employee is worried that the activity he would like to engage in may be prohibited by the Hatch Act, he can obtain advice from the Information Office of the Civil Service Commission and remove the last traces of doubt as to the legality of his action.

Since the regulations are, in fact, widely distributed and reasonably clear, it is unlikely that many employees refrain from participating in permissible activities because they fear running afoul of the law.

IRONY OF H.R. 8617

It seems ironic that in the present post-Watergate atmosphere, some Members of Congress are urging prosecution of violations of the merit system, while they are, at the same time, urging repeal of the Hatch Act, thereby inviting untold abuses of the merit system. This bill can only heighten the public cynicism toward our institutions.

In recent weeks, concern has been voiced by some Congressional critics that the nomination of a politically experienced official to a sensitive agency might "politicize" that agency. How ironic, therefore, if these same critics now remain silent when a bill like H.R. 8617 threatens to politicize not one agency but the entire Federal government with its 2.8 million Civil Service and Postal Service employees.

Although only a handful of Federal employees would seek to become involved in partisan affairs, if H.R. 8617 becomes law, all will be subjected to the subtle coercive forces that would be unleashed. In the minds of many employees, there is little doubt that such coercive forces would exist.

When asked by the Survey Research Center of the University of Michigan whether repeal of the Hatch Act would "change things like job appointment and job promotion," a majority replied in the affirmative. And every citizen in the country would suffer if the politicization of the Civil Service leads to a deterioration in the quality of service government can provide. Then America would be left with what Chairman Hampton of the Civil Service Commission has described as "a second-class Civil Service."

H.R. 8617 SHOULD BE DEFEATED

This bill, if enacted, will be disastrous for the Federal employees, the Civil Service merit system, and the American public.

It will strip away the protection which the employees have enjoyed under the Hatch Act for the past 36 years.

It will seriously damage the integrity of the merit system and the efficiency of the non-partisan, independent Civil Service.

And it will be most unfair to the American people who will be saddled eventually with a second class Civil Service open to the evils of the old spoils system.

H.R. 8617 should be defeated.

HIRAM L. FONG.
HENRY BELLMON.

Mr. WILLIAM L. SCOTT. Mr. President, I commend my distinguished friend from Hawaii for the remarks that he has made in opposition to the bill before us. This measure, in my opinion, is not in the interest of the Government or the interest of the Government employee. In fact, it appears to me, as the distinguished Senator from Hawaii has mentioned, to be a leap backward toward the spoils system which we have been attempting to eliminate over the past century.

The Senate will recall that President Garfield was assassinated by a disappointed office seeker, and his successor, Chester A. Arthur, recommended legislation to establish a merit system.

As I recall, some additional steps were taken by Theodore Roosevelt while he was President and in recent years it has become the general policy of the Government to place as many non-policy-making jobs as possible under the merit system.

Frankly, I believe having political activists performing the day-to-day chores of the operation of the Government would further erode the confidence citizens have in our Government. In my opinion, Government employees want the protection provided by the civil service laws, including the Hatch Act. Although the suggestion that civil service employees are second-class citizens has been alleged over a long period of years, it does not seem reasonable to me that the Congress can enact legislation whereby an employee can be protected in his employment and at the same time be permitted to engage in all phases of partisan political activity.

Moreover, if additional employees join labor organizations and questions of strikes by Government employees arise from time to time, we could be putting the Government in a position where labor leaders could exercise undue influence over policymaking in Government and even be able to shut down the operation of our Government. A bipartisan commission on political activities of Government personnel had hearings on this question in 1967 but I do not recall Congress taking any action on its general recommendations. I appeared and testified as a Congressman representing the nearby 8th District of Virginia. Later I polled citizens of my district to determine how they felt about permitting Federal employees to participate in partisan politics.

A majority of those responding indicated they favored participation at a local level but not at State or Federal levels. The question was asked, Should the Hatch Act be amended to permit

Federal employees to participate in partisan politics: First, locally; second, at the State level; third, at the Federal level; and fourth, retain present law? Sixty-four percent favored participation locally, 45 percent at the State level, and only 31 percent at the Federal level, while 53 percent favored retaining the present law.

It would be my opinion, Mr. President, that this poll taken in 1969, still reflects the opinion of Government employees. I might add that the congressional district included part of Fairfax County, all of Prince William and Loudoun Counties in Virginia and a number of more rural counties. Yet, the district had a sizable number of Federal employees working within the District of Columbia, Fort Belvoir, Quantico, and other nearby facilities.

It is my understanding that the four Senators representing the States adjoining our seat of Government—Maryland and Virginia—are opposed to the general provisions of this bill. We represent areas with large concentrations of Federal employees, and in opposing this proposal, in my opinion, we are acting both in the public interest and in the interest of Government employees.

The civil service employee is afforded protection because he is not a political activist and the Government does not suffer the loss of confidence it would have by having the day-to-day operation performed by partisans.

We all know, however, Mr. President, that the Federal employee can now vote in all elections, and, in fact, is encouraged to vote by being excused for a limited period of time from his official duties when necessary in order to do so. He can also discuss his political preference with his friends and neighbors.

This is a phrase that is used from time to time, but I believe that in private conversations, as long as he is not on a soapbox, he can express his political point of view. In fact, he is able to participate in a wide variety of ways, but is not permitted to be a candidate for office, to manage a political campaign, or to make political speeches for or against candidates for political office. An exception is made, as I understand it, in the general Washington area where employees can be candidates for local office on a non-partisan basis and can support the Candidate of their choice. I also understand that the same course of action is permitted with the consent of the Civil Service Commission in areas throughout the country where a majority of the citizens are Federal employees.

This is a part of the present law I believe should be changed. When we per-

mit an employee to seek office or to support candidates for local office on a non-partisan basis, the candidates are opponents of other candidates seeking office under the Democrat or Republican banner. In effect, it creates a third party at the local level and in three-way races, candidates are elected who may not be the choice of a majority of the local people.

I believe it would be preferable to permit a Government employee to seek office as the nominee of one of the major parties and eliminate the fiction of non-partisanship when, in fact, the non-partisans are the equivalent of a third political party.

Therefore, Mr. President, I have left at the desk a proposed amendment that will be offered at the proper time, and I ask that it be printed.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WILLIAM L. SCOTT. This amendment would strike out all after the enacting clauses of the measure before us and to substitute a provision whereby Government employees can participate as partisans at the local level. This is in accord with the recommendation of the Commission on Political Activity of Government Personnel referred to above.

I am sure all of us want our Government operated as efficiently as possible, giving due consideration to the welfare of Government employees but I believe, Mr. President, that this can be accomplished when the rank and file of the Federal workers are not active political partisans but career employees carrying out the decisions made at the policy-making level by elected officials or those appointed officials who share the basic political views and philosophy of those who appoint them.

It is often said that the Chief Executive of the country cannot control the vast governmental bureaucracy even when we have a merit system but his control would be much less effective if the rank and file of Government employees were active partisans who might or might not, at a given time, be a member of the same party or share the same philosophy as the party in control of the affairs of Government, those elected to govern.

I understand that should this measure pass, the President intends to veto it and I would urge him to do so because, in my opinion, it would jeopardize the efficient operation of Government. It is not in the public interest, or the interest of the employees themselves.

Mr. STEVENS. Mr. President, as of

December 1975, the U.S. Federal civilian employees numbered 2,904,805. Almost 3 million individuals are prohibited from taking an active part in their Nation's political activities.

Almost 3 million American citizens are specifically prohibited from:

Serving as a member of a national, State, or local political party or club.

Soliciting, receiving, or handling funds for partisan political purposes.

Participating in fundraising activities.

Taking an active part in a political campaign.

Becoming a partisan candidate for elective office.

Soliciting votes in support of, or in opposition to, a partisan candidate.

Driving voters to the polls.

Endorsing or opposing a partisan candidate for public office.

Serving as a delegate or alternative or proxy at a party convention.

Addressing a caucus or rally, or initiating or circulating a partisan nominating petition.

Under current law, a Federal employee is in violation of the Hatch Act by having a partisan candidate's bumper sticker on his/her auto, or a candidate's sign in his yard, even though that sticker or sign may have been placed there by the Federal employee's spouse or family member. The Hatch Act, in fact, not only restricts the Federal employee from participating in political activities, but in reality it actually prohibits the Federal employee's family from certain political involvement as well.

The bill coming before us now, during the beginning of our Nation's Bicentennial celebration, will once again provide our Federal employees with their rights as established by the Constitution of the United States. The provisions of this legislation will once again permit all Americans the right to take part in the procedures of their Government—a Government established for the people, by the people—not just a Government for the people but by some of the people. This bill will once again permit all citizens the right of free speech and free association which the Constitution guarantees.

While permitting the Federal employees private citizen involvement, H.R. 8617 will protect them from abuses and coercion. It explicitly prohibits coercion of subordinates, and protects them from improper political pressure even more specifically than does existing law. It prohibits contributions in return for votes—between employees—and on Federal property. It prohibits political activity while on duty or while in uniform. Today, approximately 3 million American citi-

zens are denied the right to participate in the political process by which their country's Government is established.

As one Federal employee told me, "I have no political ambition at present. However, I would like to aid in the choice of my elected representatives and campaign for them as every other American citizen is permitted to do. Because I work for the Federal Government does not mean that I have to be a second class citizen."

That is the point I want to reemphasize. For the past 20 years, we have been striving to implement and maintain the rights of individuals as set forth in the Constitution. We have been working to insure that all American citizens, regardless of color, creed, or religion, are provided equal rights in America. Can we then continue to maintain a Government which cannot prohibit citizens in general from engaging in political activities—yet nonetheless controls the off-duty activities of its employees?

CONGRESSIONAL RECORD—SENATE *March 10, 1976*FEDERAL EMPLOYEES' POLITICAL
ACTIVITIES ACT OF 1975

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of the unfinished business, H.R. 8617, which the clerk will state by title.

The legislative clerk read as follows:

A bill (H.R. 8617) to restore to Federal civilian and Postal Service employees their rights to participate voluntarily, as private citizens, in the political processes of the Nation, to protect such employees from improper political solicitations, and for other purposes.

Mr. McGEE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. McGEE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McGEE. Mr. President, I yield to the Senator from Michigan.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. GRIFFIN. Mr. President, since its enactment over 36 years ago, the Hatch Act has survived largely intact despite repeated court challenges and several congressional amendments. As early as 1947, the U.S. Supreme Court rejected a constitutional challenge to the Hatch Act in *United Public Workers against Mitchell*. As Mr. Justice Reed stated in the court opinion:

Congress may reasonably desire to limit party activity of federal employees so as to avoid a tendency toward a one-party system. 300 U.S. 75, 100 (1947).

Notwithstanding the Court's decision, critics of the act continued to challenge its provisions prohibiting Federal employees from taking an active part in political activities. The Hatch Act was amended twice, in 1950 and again in 1962, before it was brought once more to the Supreme Court in 1973. The Court, in *U.S. Civil Service Commission against the National Association of Letter Carriers*, reaffirmed the *Mitchell* case and again held that the prohibitions against political activities by Federal employees

were indeed constitutional. In a 6 to 3 decision, Mr. Justice White, speaking for the majority, further stated that:

A major thesis of the Hatch Act is that to serve this great end of Government—the impartial execution of the laws—it is essential that federal employees, for example, not take formal positions in political parties, not undertake to play substantial roles in partisan political campaigns, and not run for office on partisan political tickets. Forbidding activities like these will reduce the hazards to fair and effective government. 413 U.S. 548.

It was thought that the landmark *Letter Carriers* opinion of the Supreme Court would cool the debate over certain political prohibitions in the act. However, the following year, State and local employees were exempted from most of the act's prohibitions by an amendment included in the Federal Election Campaign Act of 1974.

Today, only 3 years after the *Letter Carriers* decision, we have before us a piece of legislation which would in effect repeal an act which has for years withstood the scrutiny of Congress and the Supreme Court, and which thus pro-

moted development of a professional, nonpartisan civil service corps. This bill would strike out important provisions of the existing act, including section 7324 (a) (2) which prohibits executive agency employees from taking "an active part in political management or in political campaigns"; and would replace such provisions with specific prohibitions against: First, using official authority to affect an election or influence an individual's vote or political contribution; second, soliciting of employee political contributions by the employee's superior; and third, soliciting political contributions in any Federal room or building used in the discharge of duties. H.R. 8617 would also establish a new board, in addition to the Civil Service Commission, to adjudicate alleged violations and allow leave without pay and accrued annual leave options for Federal employees who are candidates for political office.

While the prohibitions in H.R. 8617 certainly are the minimum necessary protections for Federal employees from widespread political pressure, it is important to note that all the other activities currently prohibited under the Hatch Act would be permitted if this bill

were to become law. Thus, under H.R. 8617, Federal employees could, among other things, run for political office, manage election campaigns, solicit votes, participate in fund raising, and endorse candidates.

The question we must ask ourselves, I think, is can we risk inviting a return to the spoils system by gutting the Hatch Act—which I suggest is the effect of the pending bill? Judging from the arguments presented by proponents of H.R. 8617, I strongly suggest it is not worth the risk.

Supporters of the bill claim, for example, that the Hatch Act is overbroad and infringes on a Federal employee's constitutional rights. It is argued that the Hatch Act is vague and out of date and that circumstances have changed making prohibitions against private political activities unnecessary. It is further claimed that the bill would require stronger employee protection. I would like to take some of these arguments and answer them.

Let us take the most frequently heard argument first—that the act infringes upon a Federal employee's political rights to such an extent as to render him a second-class citizen. As indicated earlier, the Supreme Court has ruled that there is no constitutional difficulty with the present Hatch Act. Nowhere in the Constitution does anyone find an inherent right to be a Federal employee and to be a political activist. Unlike the private employee, the Federal employee's salary is paid for by the public with the expectation that he or she will be impartial in the execution of the law and of administrative programs providing basic services to the general public.

Indeed, the argument against the Hatch Act can be reversed by recognizing the right of a Federal employee to be free from political coercion by his or her coworkers and superiors. Since the coercive power of coworkers and superiors is derived from the Government itself, the Hatch Act is not restricting Federal employees' rights but actually restraining the coercive power of the Government itself.

Besides, the Hatch Act is not a bar to all political activity. Currently, a Federal employee may vote, express opinions, make financial contributions to a political party, participate in nonpartisan activities, be a member of a political party, be an independent candidate in a nonpartisan election and in some cases even in a partisan election, sign petitions, be politically active in nonpartisan referendum, and various other activities. So, Federal employees do have a con-

siderable degree of flexibility. The prohibitions against certain other political activities are there not to penalize a Federal employee but to insure that the integrity, efficiency, and neutrality of the employee and the agency he works for are maintained in carrying out public responsibilities.

Thus, this argument of unnecessary infringement does not seem to justify removing important Hatch Act restrictions on certain political activities as proposed under H.R. 8617. And these restrictions cannot be limited to political activities occurring during working hours. Political coercion does not end when the employee leaves his office. As Justice Reed stated in the Mitchell decision:

The influence of political activity by government employees, if evil in its effects on the service, the employees, or people dealing with them, is hardly less so because the activity takes place after hours. *Mitchell*, supra at 95.

As far as arguments that the act is vague as to what activities are prohibited, I would cite Mr. Justice White in the Letter Carriers opinion in which he stated:

They (the prohibitions) are set out in terms that the ordinary person exercising ordinary common sense can sufficiently understand and comply with, without sacrifice to the public interest.

The prohibited activities are specified in regulations promulgated by the Civil Service Commission. The Commission has also established a procedure so that an individual may address any questions about the meaning of the law to the Commission for clarification.

In response to the argument that the law is out of date, my question is, has human nature changed so much in 36 years that there is no longer any need to protect against a politicization of the civil service? A brief look at recent scandals and the low public opinion of political figures should answer that question.

As for the argument that times have changed and Federal employees are professional people less subject to oldtime political coercion, I point to the Survey Research Center's figures indicating that at least 1.5 percent of all Federal employees were asked to contribute money to political campaigns by their superiors, and 1.2 percent were requested to participate in prohibited political activities. If this number of violations are occurring while the Hatch Act is in effect, think

how many more violations will occur if the less restrictive H.R. 8617 is passed. I

agree that times have changed, but since 1939 the number of employees has tripled and the budget is 34 times larger. Changing circumstances indicate that we need the Hatch Act even more now than in the past.

Finally, I cannot agree that H.R. 8617 would actually provide stronger employee protection by its specific prohibitions, the creation of a new board to adjudicate claims, and additional criminal penalties. How does the act prevent such a subtle act as indirect coercion. H.R. 8617 would not prevent a friend of a superior from soliciting political contributions from the superior's employees. Each employee would contribute out of fear that his superior might overlook his promotion upon learning of the employee's refusal to contribute.

How does the act deal with a situation where an employee campaigned against a candidate for public office who later becomes that employee's new boss? Is it not likely that the employee will have a difficult time working with his new boss?

In short, I do not find the arguments in favor of replacing the Hatch Act with H.R. 8617 provisions convincing. A weakening of the Hatch Act may appear to be an open invitation to widespread abuse. Furthermore, there has not been a large-scale movement on the part of Federal employees to weaken the act. In a recent poll conducted by the National Federation of Federal Employees, 89 percent of its members wanted to continue the act as it is. Mail from my Michigan constituents also overwhelmingly disapproves of H.R. 8617.

But, whether or not a widespread politicizing of federal employees occurs under H.R. 8617, it is important that it not even appear that partisan considerations enter into Federal administrative decisionmaking. There must be no hint of a conflict of interest if we are to maintain efficient and fair governmental administration. As Mr. Justice White so aptly stated in the Mitchell decision:

It is not only important that the Government and its employees in fact avoid practicing political justice, but it is also critical that they appear to the public to be avoiding it, if confidence in the system of representative Government is not to be eroded to a disastrous extent.

There are other troublesome issues raised by H.R. 8617, such as the propriety of allowing a Federal employee seeking political office to remain connected with the government through allowances for collecting accrued annual leave and leave without pay. There is also a constitutional separation of powers question when an executive agency such as the Civil Service Commission must submit

proposed implementing regulations to Congress for approval.

It seems rather ironic that we are now debating a bill that would allow and even encourage Federal employees to become political activists and possibly political officeholders when not so long ago many Senators questioned the propriety of nominating a gentleman with a political background to a politically sensitive intelligence post. Nor was it so long ago that the Senate Select Committee on Presidential Campaign Activities—the Senate Watergate Committee—in their final 1974 report recommended that the Hatch Act be extended to include all Justice Department officials.

It is time that the Senate face up to the political realities of the situation and recognize the dangers inherent in emasculating the Hatch Act. Although there may be areas under current law that perhaps need clarification, H.R. 8617 is not the proper means to that end.

I, therefore, urge my colleagues to oppose this bill.

Mr. President, it is my strong view that the Hatch Act is basic and important and ought to be kept intact. I hope very much that in its wisdom the Senate will not pass the pending bill which would weaken and gut the Hatch Act.

I think, at a time when there is, unfortunately, a lot of cynicism and distrust of Government and the institutions that make up the Government, certainly this would not be the time—if there ever were a time—to repeal the Hatch Act and to turn the Federal Civil Service over to the spoils system.

The people of this country, it seems to me, want to have their faith in governmental institutions restored, not further diminished. The passage of this kind of legislation, to me, would be moving a long way in the wrong direction. I hope it will be defeated.

I thank the chairman for yielding the time.

Mr. BAKER. Mr. President, I oppose this legislation to revise the Hatch Act and permit Federal civilian and Postal Service employees to actively participate in partisan political campaigns and other activities.

In my view, the Hatch Act was drawn to protect both Federal employees and the public, and proposals to alter Hatch Act restrictions should be examined with an eye toward their effect upon both of these groups.

No one argues that, in 1939, when the Hatch Act was enacted, it was badly needed to prevent abuse of the civil service merit system and to protect public employees from pressures for political favors and contributions. It was recog-

nized at that time that public employees were in a unique position: As administrators of laws affecting all citizens their impartiality was essential to the effectiveness of Federal programs and to the public's perception of the Federal service as a nonpartisan, nonpolitical entity. Moreover, Federal employees were prime targets for those who would seek to politicize the Federal service and insure that programs were administered in a manner which would promote certain political goals.

Since 1939, the Federal Government has increased vastly in size and strength. The fact that there are more civilian employees now than ever before and that Federal programs affect more Americans directly and indirectly than at any time in our history argues strongly, in my view, for continued protection of Federal employees and the public from political influences rather than a lessening of that protection.

Supporters of the bill contend that: First, Federal employees are denied their first amendment freedoms and relegated to second-class citizenship by the Hatch Act; and second, H.R. 8617 provides adequate protection from coercion by those who would enlist the involuntary aid of employees for political purposes.

The Hatch Act does not prohibit Federal employees from exercising a whole range of options relating to political activity. They may register and vote, freely express political opinions, join political parties and participate in political rallies and fund-raising activities. They may not, however, take an active part in political campaigns; and this provision of the law has been upheld by the Supreme Court as constitutional and consistent with the public benefit inherent in fair and impartial administration of Federal laws. As stated so well by my colleagues—Senators FONG and BELLMON—in their minority views filed with the report on this bill—

The act merely recognizes that . . . one has no inherent right under the Constitution to be a Federal employee and a political activist at the same time.

Moreover, it seems clear that many, perhaps a majority, of Federal employees would prefer no change in current Hatch Act restrictions. My own mail has run heavily in opposition to this measure, and I understand that polls taken by other Members of Congress whose districts contain a heavy percentage of Federal employees have shown that a great majority favored retention of the Hatch Act.

In addition, I am not persuaded that the prohibitions included in the bill against solicitation of employees by those

with supervisory authority over them will adequately protect employees themselves from coercion. Surely all of us realize that subtle political pressures are difficult, if not impossible, to demonstrate and prove. Recent years have shown that existing law has been violated more than once. How much greater will be the potential for violation when current prohibitions against active participation in political campaigns are removed. I wonder how an employee passed over for promotion would undertake proving that his failure to support the election of a candidate whose campaign his supervisor was responsible for his having been refused the job.

In the wake of Watergate and the revelations associated therewith, one of the most important tasks of the Congress and the executive branch is to rebuild and restore public confidence in Government. I do not believe that we can combat examples of use of Federal funds for political purposes by lessening existing protection against political activities by Federal employees. On the contrary, I believe that enactment of this legislation would result in an erosion of public confidence, an increase in cynicism on the part of Americans as they view the Federal service and a weakening of the merit system on which Federal employment is based. I urge my colleagues to oppose the bill.

Mr. McGEE. Mr. President, we want to bring up an amendment that the Senator from Hawaii has.

Mr. President, I wish to say one or two things today and I prefer not to make it too long because of the questionable receptivity of the empty desks that are around the chamber. These are very wise desks in the history of the Senate. They have accumulated a collection of knowledge. But it takes a little longer than would be possible to serve here in order to get the point across.

Mr. President, for the RECORD, I would like to mention a couple of things.

We have heard a great deal of polls being taken about what Federal employees think about the pending measure. I have noted in checking various Federal employee groups around the country, and particularly in some close by, that there has been a common misrepresentation or a mistake made in the way the question has often been posed.

I was amazed at the number of Federal employees who said to me, "Why are you trying to repeal the Hatch Act? We oppose the repeal of the Hatch Act."

That is where the gamesmanship has come into play among certain groups around the country, leaving the impression that somebody back here in Wash-

ington is trying to wipe out the Hatch Act.

I want to say again in unvarnished terms, the purpose of this legislation is to upgrade the Hatch Act. The Hatch Act was one of the wisest and most venerable of the legislative changes made in the processes of public service. We believe it is important to keep it intact.

But I have to remind those who may read this RECORD, Mr. President, that the abuses of the Hatch Act very rarely started at the bottom and worked their way up to the top. The abuses that were envisaged by the Hatch Act were those that started at the top, often at the White House level, and went down through pressures, arm twisting, threats and firings. The Hatch Act was aimed at protecting the public employee from that kind of pressure. It was to try to protect his position in public service from unauthorized, illegal, or covert efforts to abridge his own freedom of choice.

The suggestion is made to us from time to time that the Civil Service Commission has the responsibility for interpreting law and what it means and what kind of a case the law applies to.

We have several thousand opinions from the Civil Service Commission; some of them fall in very uneven ways. There is the case of a Federal employee who was pentalized because his wife worked for the candidacy for President of a controversial public figure. I mentioned the case of another employee who was hailed before the Commission because he had issued an obscene statement about one of the political parties at a cocktail party, not on the job. I must say that in our political system probably one of the healthiest forms of therapy and release is the ability to criticize a political group with whatever language you choose.

Given the fact that the Commission has a difficult, fine line to draw in many cases, the purpose of this legislation is to catch up with lessons of our time in order to make sure what the intent of the Hatch Act in fact is.

The intent should never be to inhibit participation in a relevant, political way of any Federal employee as long as he confines himself to the rules on the job. That is, he cannot use his job as a means for purveying his political wishes or activities in behalf of a candidate. At the present time, the Hatch Act is interpreted as prohibiting a Federal employee from contending for some levels of public service through the election route.

There are variables here. Variables making it more permissible for him to run for the board of commissioners or the school board, or even the State leg-

islature. But there seems to be a general prohibition against running for Federal office.

Mr. President, this bill simply would preserve for all Federal employees the unaltered right of citizenship with only the caveat attached that it not interfere with his job; that it not take place on the premises where he is employed, and that he himself would not be free to invade other Federal premises for the purposes of furthering his own political ambitions.

That is as it should be.

It further provides that, if he chooses to run for Federal office, he should take a leave of absence from the job, the same kind of leave of absence that many people take at the present time. They disassociate themselves from the job so they might run as a citizen of the United States. But they have the right to return to the job without penalties if unsuccessful.

However, there is no option left open that in the event of success the job will be left open for an indefinite period of time. That would be unfair. It simply means that he must separate on leave without pay for the duration of his candidacy for whatever the office.

That is really what this bill is all about. It not only pursues the original intent of the Hatch Act but it enhances it. The intent is to make sure that we prohibit meddling from the top, pressure from above, and the assertion of authority by a superior over one of his own employees. Those are the matters that are indeed sharpened and tightened, as they should be.

We have the Hatch Act operating now but not without abuses to its intent. Those abuses have occurred from the top down, not from the bottom up. Therefore, it seems to me that it misses the point when critics of this proposal continue to warn us that we are going to have all kinds of trouble coming from the lower echelons up through the service.

There is no record of that, Mr. President. In fact, in the legislative history a few years ago, in the wisdom of Congress, we separated a lot of public employees from that implication of the Hatch Act; that is, State and local employees. We have yet to receive a case in this instance of any significance where there were abuses at the bottom.

Thus, the purpose, of the bill is to restore the Hatch Act to its original intent without hobbling the broadest citizenship rights and responsibilities of those who are covered by the Hatch Act. It is spelled out very clearly.

If we can only eradicate this hogwash about repealing the Hatch Act, I believe we will then be getting down to the sum

and substance of the measures included in this bill.

Mr. President, it was said here in the Senate late yesterday afternoon that passage of the pending bill to amend the Hatch Act would be a step backward, not just to 1939 and 1940, when the Hatch Act as we know it was enacted, but to 1907—the year Civil Service Rule I. was promulgated. But is that so? I think that passage of H.R. 8617 would at long-last improve and refine the Hatch Act. To those of us who favor and support this legislation it is a step forward, in consonance with the Nation's steady movement toward expanding civil liberties and an expanded and involved electorate.

The Hatch Act, in all its vagueness, represents a departure from the American march toward greater participation in the electoral processes by which we choose our leaders and ultimately decide our future as a people. And it is a vague law indeed, incorporating as it does, "those acts of political management or political campaigning which were prohibited on the part of employees in the competitive service before July 19, 1940, by determinations of the Civil Service Commission under the rules prescribed by the President."

Mr. President, there are about 3,000 such determinations and a Federal employee is bound by all of them. I will grant that the Civil Service Commission has boiled these down into a list of "do's" and a list of "don't's," but that does not change the law nor the chilling effect such broad statutory language has upon the people who are subject to it and to the severe penalties required to be imposed on those found to have violated the law. And the penalties are severe. He is removed from his job unless the Civil Service Commission finds unanimously that the violation does not warrant removal, in which case the penalty is 30 days' suspension without pay.

By contrast, the bill before us is a gem of specificity and reasonableness. It says an employee may engage, voluntarily as a private citizen, in partisan political activity so long as he adheres to the specific limits spelled out in the bill. And it provides an impartial and independent Board with the authority to fit the penalty to the crime, so to speak.

The Supreme Court has, and quite recently, held in the case of the U.S. Civil Service Commission against the National Association of Letter Carriers that the Hatch Act is a constitutional enactment. We supporters of H.R. 8617 certainly do not quibble with that judgment, which does not mean that the Hatch Act as it stands is untouchable by the Legislature. Indeed there was a dissenting opinion on

that case in which three Justices held that "it is of no concern of Government what an employee does in his spare time, whether religion, recreation, social work, or politics is his hobby—unless what he does impairs efficiency or other facets of the merits of his job."

This bill did not spring full-blown from the committee after 2 days of hearings. Indeed, the committee has been concerned with the Hatch Act for some time and might well have reported legislation at an earlier date, save for the

course of the litigation that led to the Supreme Court's decision in June of 1973. Hearings were held on legislation of similar purpose in the 92d Congress and back then, in 1972, the Civil Service Commission assured us it was working on proposed legislation that would address the need for change in the Hatch Act. The trouble is, of course, that time and events press on but the executive branch does not always do so. We still have not received those recommendations, described as work in progress back in 1972, and it now is 1976.

The vagueness of the Hatch Act was recognized and commented upon by The Commission on Political Activity of Government Personnel in its 1968 report. It reported:

... there are every-increasing difficulties confronting public employees in ascertaining what the statutory restrictions mean under the Hatch Act, and in knowing what interpretation has been given to the act by the Civil Service Commission in rulings which often are not published or readily available in usable form.

Everyone, it seems, can cite that Commission. I did so in my remarks yesterday, when I noted that the Commission had commented in its report upon the dramatic changes, not only in the American political system, since 1939, but also in the civil service itself. It is more sophisticated, more technological, more merit and performance directed, and less susceptible to traditional patronage schemes—patronage schemes we have seen of late.

And, Mr. President, the Hatch Act did not deter those cloaked with executive power from hatching such a scheme. My point is that abuses of this nature do not flow from the activity of private citizens acting voluntarily, by their own lights, on their own free time. Abuses of the merit system flow from the top down. Abuses of the political system, virtually all evidence tells us, descend in the same manner.

What we need is to promote involvement in the political processes of citizens in all walks of life, not discourage it.

We are told that civil servants do not

want changes in the Hatch Act. Of some, that undoubtedly is true. Of others, it most certainly is not. I do not believe the Senate of the United States should peg its decision upon postcard polls conducted by Members of Congress within their districts. Indeed there is evidence of disagreement among such polls. I do not believe the Senate of the United States should base its actions on a more statistically-sound but dated and somewhat ambiguous poll now 8 years out of date.

When the report of the Commission on Political Activity of Government Personnel was issued in 1968, State and local employees engaged in work funded in whole or in part by Federal funds were also hatched to the same extent that Federal workers still are. Today they are not. The Congress in its wisdom, as a provision of the Federal Election Campaign Act Amendments of 1974, substantially un-Hatched those State and local employees. I have not heard of a scandal yet.

So, Mr. President, the Congress has moved, a step at a time. The next step is to accord to Federal employees essentially the same rights that other Americans enjoy to participate in the political decisionmaking process to the extent they wish to.

This issue of individual rights has been turned, by some, into an anti-labor issue. The threat they see is that unions composed of Federal workers will somehow gain more "clout" that will enable them to get a "stranglehold" on our Government.

That their members will be free to take an active part in political affairs is unarguable. But that is the right of all Americans, is it not?

That unions or associations or clubs composed of employees of the Federal Government will be free to take a position on public issues and work toward the realization of their freely arrived at goals is also true. But what is wrong with that?

So long as the Senate stands, with the House across the way and with the White House to the west and the Court to the east of us, I do not think we need fear that Federal employees will get a stranglehold on this Government. They might have a voice, just as every other group of Americans can have. But if anyone thinks the Federal employee speaks with one voice, he is sadly mistaken. If the various polls cited here yesterday demonstrate anything, they demonstrate that.

In 1939, when the Hatch Act was amended, without public hearings on the bill in either House, incidentally, and

without substantive debate in the Senate, only about one-third of the Federal work force of 950,000 was under the merit system. Today the Federal work force, as we all know too well, is considerably greater, and two-thirds of it is under the merit system. That system is a good one. It can use strengthening, yes, but the professionalism of that work force and of the Civil Service Commission itself in administering the system these people labor in is such that it insures much greater protection for the employee than existed in the days of the depression when the abuses that gave rise to the Hatch Act arose. And those abuses did not by-and-large involve the career civil service, but rather the various programs created outside the competitive service to address the economic conditions of that time.

H.R. 8517 frees the Civil Service Commission to focus its energies on the task of educating employees and seeking out both potential and real violations of the law. It goes far to protect the employee against coercion, be it blunt or subtle, whether from a supervisor or a force outside the civil service.

The Senate has been told that this act, permitting employees to take part voluntarily and on their own free time will have a corrosive effect on them. In other words, politics is a corrosive business. It may well be that many people believe that, is so, which is unfortunate. All 100 Members of this Senate are politicians. All 100 Members of this Senate presumably believe that politics is at the very base of our decisionmaking process. If politics has become a dirty word among some people, it should be our responsibility to uplift it. Nearly 3 million Americans out there are alienated from their right to fully participate and assist in the uplifting of politics. They are people who have passed the tests of the merit system. They measure up. They will not corrode our political system. They can bring to it much polish to help shine the image, if that is their choice.

Mr. President, many things have changed since 1939. The Works Progress Administration, in which the abuses which gave rise to the Hatch Act centered, is long gone. The stringent restrictions on the rights of the vastly-increased Federal work force, however, remain as a holdover from those by-gone days. Those rights should be restored and the emphasis placed upon curbing abuses, which is where H.R. 8617 puts the emphasis. It is said we are repealing or "emasculating" the Hatch Act. It is true this bill would work some significant changes in the Hatch Act, up-dating it

to conform with the realities of 1976, not 1939. Those changes are fully justified, for it is a serious business to curb the rights of any citizen.

Mr. President, we are now prepared to turn to a series of amendments that are being proposed by Members of this body. It is appropriate that the ranking minority member of the committee, the distinguished Senator from Hawaii (Mr. Fong) start that process. We have no agreement as to time. We have no limitations of that sort. We are considering the amendments at this stage on their substance.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Chair will advise the Senator that floor amendments are not in order until the committee amendments have been disposed of unless it is an amendment to a committee amendment.

Mr. McGEE. May I make a parliamentary inquiry?

The PRESIDING OFFICER. The Senator will state it.

Mr. McGEE. Those are technical amendments. It does not violate the procedures to address the question of the pending amendment. We will have it formally laid before the Senate as soon as that little bookkeeping matter is taken care of.

The PRESIDING OFFICER. The Senator is correct. The Senator could ask unanimous consent that the committee amendments—

Mr. McGEE. I ask unanimous consent that we may proceed in the discussion of a pending amendment under those ground rules.

Mr. FONG. I have no objection.

The PRESIDING OFFICER. That does not require unanimous consent. The Chair would suggest that the committee amendments could be agreed to en bloc and that the bill as so amended be treated as original text.

Mr. McGEE. Then I ask unanimous consent, that we turn now to the amendment of the Senator from Hawaii as the pending business.

The PRESIDING OFFICER. Once the committee amendments are disposed of we can turn to his amendment.

Mr. McGEE. I am asking unanimous consent that before the committee amendments are disposed of, because they are being grouped and prepared for submission, that we allow Senator Fong to proceed, with the understanding that we simply want to avoid any delay that would otherwise ensue.

The PRESIDING OFFICER. Does the Senator refer to the reported committee amendments?

Mr. McGEE. If the Parliamentarian

will advise the Senator from Wyoming: We have agreed that the Senator from Hawaii should proceed next. Any way you want it phrased, framed, or submitted, so that we are in order, I ask unanimous consent that that be agreed to.

The PRESIDING OFFICER. Without objection, the Senator from Hawaii may offer an amendment at this time.

Mr. FONG. Mr. President, the distinguished chairman of the committee says that there has been widespread talk that we are repealing the Hatch Act by the present legislation. Although the legislation which is before us at this time does not repeal the Hatch Act in toto, in substance it knocks out the most substantive part of the present Hatch Act. In substance, it knocks out the very heart of the act.

I am referring to sections 7323 and 7324 of the United States Code. Section 7323 provides as follows:

§ 7323. Political contributions; prohibition.

An employee in an Executive agency (except one appointed by the President, by and with the advice and consent of the Senate) may not request or receive from, or give to, an employee, a Member of Congress, or an officer of a uniformed service a thing of value for political purposes. An employee who violates this section shall be removed from the service.

The pending legislation does away with that provision, so that any Member of Congress could receive and could solicit contributions from Federal employees; a Federal employee could solicit from another Federal employee and receive from the other employee a contribution; and the only prohibition is that a superior could not solicit or receive a political contribution from a subordinate or at the place of unemployment.

This legislation also deletes from the present Hatch Act another very substantive provision, which I believe is the most substantive provision in the Hatch Act:

§ 7324. Influencing elections; taking part in political campaigns; prohibitions; exceptions.

(a) An employee in an Executive agency or an individual employed by the government of the District of Columbia may not—

(1) use his official authority or influence for the purpose of interfering with or affecting the result of an election;

That is basically retained in the pending bill; but this second part of section 7324 is entirely wiped out by the legislation before us:

(2) take an active part in political management or in political campaigns.

For the purpose of this subsection, the phrase "an active part in political management or in political campaigns" means those acts of political management or political

campaigning which were prohibited on the part of employees in the competitive service before July 19, 1940, by determinations of the Civil Service Commission under the rules prescribed by the President.

This rule has been in effect since 1907, when President Teddy Roosevelt declared by executive order that there should be no active campaigning or partisan management by Federal employees. This is really the heart of the Hatch Act. This provision, which deals with the prohibition on political management or engaging in political campaigns, is the heart of the Hatch Act and includes the prohibition against soliciting or the receiving of a political contribution. When the distinguished chairman of this committee said that we are not repealing the Hatch Act, technically he is correct, but substantively he is not, because we are really gutting the Hatch Act, emasculating it as we know it today.

Mr. President, yesterday the distinguished Senator from Alaska (Mr. STEVENS) made a statement on the floor of the Senate, speaking for the legislation, in which he said, as recorded in the CONGRESSIONAL RECORD on page S3108:

Under current law, a Federal employee is in violation of the Hatch Act by having a partisan candidate's bumper sticker on his/her auto, or a candidate's sign in his yard, even though that sticker or sign may have been placed there by the Federal employee's spouse or family member. The Hatch Act, in fact, not only restricts the Federal employee from participating in political activities, but in reality it actually prohibits the Federal employee's family from certain political involvement as well.

This is the statement made yesterday by the distinguished Senator from Alaska. Mr. President, that statement is not correct. I called and asked the Civil Service Commission to look at that statement and give me a reply, and this is the reply I received this morning from the Civil Service Commission. I read it for inclusion in the RECORD:

Senator Stevens was misinformed in some of his remarks on Tuesday. He stated it is in violation of the Hatch Act for Federal Employees to have bumper stickers on their car or a candidate's sign in their yard, even if placed there by a spouse or family member. He stated that the Hatch Act in reality prohibits an employee's family from certain political involvement as well.

This is simply wrong. The Commission's regulations specifically allow employees to "display a political picture, sticker, badge or button." (5 Code of Federal Regulations 733.111(a) (3)). Small yard signs and window posters are in basically the same category of permitted activity. Further the Hatch Act applies only to employees, not to an employee's spouse or to other family members who are not themselves also employees.

So you see, Mr. President, a member of a Federal employee's family can do anything. Nothing in the Hatch Act prohibits that member of an employee's family from campaigning actively or becoming a campaign manager, or becoming a candidate for office. Even the Federal employee himself could carry a badge. He could display a sticker saying "I am for Senator so and so." That is permissible. So the statement made by the distinguished Senator from Alaska yesterday is wrong, and I wish to correct the record.

Mr. WILLIAM L. SCOTT. Mr. President, will the Senator yield?

Mr. FONG. I am very happy to yield to the distinguished Senator from Virginia.

Mr. WILLIAM L. SCOTT. Mr. President, I appreciate the Senator's yielding.

Recalling back a few years ago, the question came up before the Civil Service Commission, and as I recall, when they were thinking of the spouse doing things not permitted the employee under the act, the Commission said that if the spouse were acting as agent for the employee, then it would be prohibited, if, in effect, the spouse were acting at the employee's command. If we are talking about a male employee, I do not know how one can make his wife do something that she does not want to do. We think of husband and wife as being independent and doing things that they either want to do or do not want to do. I do not know how one would prove that the act of a spouse was really the act of an employee.

Mr. FONG. Unless the spouse will testify as such, but one cannot get any spouse to testify as such.

Mr. WILLIAM L. SCOTT. I doubt that. There also might be a question of rules of evidence involved.

But I recall when I was a classified employee, and I was one for more than 26 years. I expect I was such an employee about as long as any other Member of Congress. I was working under the Classified Civil Service. While an attorney with the Department of Justice, my wife was active in politics, although I was not active, as I was covered by the Hatch Act and by the existing provisions of law.

So, I agree with the statement made by the distinguished Senator from Hawaii and certainly with the Commission's view. I think this is done all the time and done openly and knowingly, and the Commission is aware that other members of families can participate and the act applies to the employee only.

Mr. FONG. Just to the employee.

Mr. WILLIAM L. SCOTT. I appreciate the Senator bringing this matter up and yielding to me briefly.

Mr. FONG. Mr. President, I thank the distinguished Senator.

I shall go further and show what the permitted activities are under the Hatch Act at present.

A Federal employee is now permitted a wide range of activities, mainly:

First, register and vote in any election;

Second, express his opinion as an individual privately and publicly on political subjects and candidates;

Third, display a political picture, sticker, badge, or button;

Fourth, make a financial contribution to a political party or organization;

Fifth, participate in the nonpartisan activities of a civic, community, social, labor, or professional organization, or of a similar organization;

Sixth, be a member of a political party or other political organization and participate in its activities to the extent consistent with law;

Seventh, attend a political convention, rally, fund-raising function, or other political gathering;

Eighth, sign a political petition as an individual;

Ninth, take an active part, as an independent candidate, or in support of an independent candidate, in a nonpartisan election.

In specified municipalities, having high concentrations of Federal employees, as in the home State of the distinguished Senator from Virginia, or in Maryland—and there are 4 places in Maryland, 11 in Virginia, and 13 in other States—employees may be independent candidates for and serve in elective office and as independents and may take an active part in political management and campaigns in connection with partisan elections for local offices of the municipality or political subdivision.

Tenth, be politically active in connection with a question which is not specifically identified with a political party, such as a constitutional amendment, referendum, and so forth;

Eleventh, serve as an election judge or clerk, or in a similar position to perform nonpartisan duties;

Twelfth, otherwise participate fully in public affairs, except as prohibited by law, in a manner which does not materially compromise the efficiency or integrity of an employee or the neutrality, efficiency, or integrity of the agency.

So, one can say, Mr. President, there are many, many things that a Federal employee can do and is permitted to do under the current Hatch Act.

The only few things that he cannot do are that he cannot actively campaign or be a campaign manager for political office and he cannot solicit or receive a political contribution for a political candidate.

AMENDMENT NO. 1276

Mr. FONG. Mr. President, at this time I call up my amendment No. 1276.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Hawaii (Mr. Fong) proposes an amendment numbered 1276.

Mr. FONG. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 3, line 19, strike out "and".

On page 4, line 2, immediately after the semicolon, insert "and".

On page 4, strike out lines 3 through 6, and insert in lieu thereof the following:

"(D) includes the provision of personal services for the purpose of influencing the nomination for election, or election, of any individual to elective office or for the purpose of otherwise influencing the results of any election;"

On page 4, line 7, strike out "(5)" and insert in lieu thereof "(4)".

On page 4, line 10, strike out "(6)" and insert in lieu thereof "(5)".

On page 6, strike out lines 4 and 5, and insert in lieu thereof the following:

"(3) knowingly give or hand over to or solicit, accept, or receive, or be in any manner concerned with soliciting, accepting, or receiving from another employee, a political contribution;"

On page 6, strike out lines 8 through 13 and insert in lieu thereof the following: "receiving, a political contribution in any room or building occupied in the discharge of official duties by—".

On page 6, line 14, strike out "(i)" and insert in lieu thereof "(A)".

On page 6, line 19, strike out "(ii)" and insert in lieu thereof "(B)".

Mr. FONG. Mr. President, this amendment, No. 1276, seeks to accomplish two objectives:

First, this amendment includes within the definition of "political contribution" the "provision of personal services for the purposes of influencing the nomination for election, or election of any individual to elective office or for the purpose of otherwise influencing the results of any election."

"Personal services" could mean such political activities as ringing doorbells and handing out literature. With this definition of "personal services," solicitation of more than financial contributions would be prohibited. And why not, when such personal services are often more valuable than financial contributions.

My amendment would protect employees from being pressured into providing this type of service, as well as from being pressured into providing financial contributions.

Under the Federal election laws, a person is allowed to contribute up to \$1,000 to a candidate. But what about a person who contributes his labor to a campaign valued at many thousands of dollars?

Since H.R. 8617 would place restraints on the contribution of money, I believe it is only right and fair to place restraints on the contribution of personal service intended to affect the outcome of any political election. This is particularly so in the case of Federal employees because of their public identity as a part of the Government, particularly so in a superior-subordinate relationship. Should a superior be allowed to solicit his subordinate to go and ring doorbells, pass out literature, or speak up for his candidate? This amendment says no.

Second, the amendment also prohibits employees—regardless of their superior-subordinate relationship—not only from giving a political contribution to another employee but also from asking for or receiving such a contribution from another employee. My amendment is intended to reduce the incidence and temptation of both giving and receiving political contributions under coercion, subtle or otherwise.

It eliminates the superior-subordinate relationship and prohibits the receiving and giving of contributions between all employees.

There are many ways an aggressive employee can exert subtle political influence on his fellow workers even though he may not be a superior of those employees. It is not enough to ban soliciting by superiors; as H.R. 8617 proposes; the prohibition must extend to all employees since, through subtle and not so subtle means, it is possible for nonsuperiors to apply coercion on other employees, who would have no protection unless an amendment such as I am proposing is adopted.

Take the hypothetical situation which Carl Goodman, General Counsel of the Civil Service Commission, presented at the Senate committee hearing on H.R. 8617:

A "superior" is known to be actively campaigning for candidate "X". One of his or her subordinates, who is generally known to be personally close to the superior, or who is known to be the superior's "right-hand man", but is not superior to other employees within the definition set forth in the bill, approaches other employees in front of the building, or in the parking lot or at their individual residences, and solicits contribu-

tions for candidate "X". Those employees so solicited must decide if it is expedient for them to either contribute or decline to contribute, being aware of the possibility that the superior may learn whether or not a contribution was made. They would also be aware that it would be extremely difficult, if not for all practical purposes impossible, to prove that any particular employee is promoted, or passed over for promotion, because he or she made a political contribution or failed to make a political contribution. There is no evidence to indicate that the superior instructed or even suggested to the subordinate that contributions should be solicited. Even if that had occurred, it is unlikely that such evidence could be obtained, since the subordinate would not be in violation by soliciting and would have no reason to implicate the superior.

Under the Hatch Act today, such a situation cannot arise since the superior cannot be actively campaigning or even if he could, his "right-hand man" could not be engaged in solicitation or other political management.

Such a case as I have just illustrated could not be successfully prosecuted under H.R. 8617.

Another illustration of subtle coercion was cited by Mr. Goodman:

An employee is aware of a vacancy which would be a promotion for him. He also is aware that the person who will make the selection is actively supporting a particular candidate. Add to that the fact that another employee who will be in competition for the vacancy is also working actively on behalf of the same candidate.

Our first employee must now make a decision with respect to his own activity. Can he really afford not to also campaign for that candidate? Or can he afford to exercise his "right" of choice by actively campaigning for the opposition?

What is at play here is internal coercion—the employee is caught between the proverbial rock and the hard place.

Today he need not be concerned about making this no-win choice—he is hatched; he is protected.

Still another illustration can be offered:

How about the employee engaged in political management who suddenly finds that the opposition candidate is his boss; or worse yet that the candidate he just successfully helped defeat now is boss and is responsible for his promotions, work assignments, leave, etc.?

Are all political activists of such pure heart that they can and will completely overlook the fact that subordinates deprived them of elective offices they worked so hard to obtain?

Those who oppose the present Hatch Act argue that the act restricts the political freedom of Federal employees and thereby infringes on their first amendment rights. But as John Bolton points out in his recent study, "The Hatch Act—A Civil Libertarian Defense," there are other important first amendment values which support the present restraints on the political activities of Federal em-

employees. These fall into two broad categories: First, Government workers have a right to be free from political coercion, not only from their superiors, but from their coworkers as well. My amendment is designed to protect the first amendment rights of the Federal employee to be free from political coercion or influence of his fellow employees, regardless of superior-subordinate relationship.

John Bolton, in discussing first amendment rights, says, further, that the first amendment rights of the general public are at stake here, too, for the public's willingness to speak or associate may be chilled if it believes that its political activity, or lack of political activity, will make a difference in the way it is treated by a politically active bureaucracy.

FEDERAL WORKERS NOT "SECOND-CLASS CITIZENS"

In discussing first amendment rights, proponents of H.R. 8617 have advanced the specious claim that the Hatch Act reduces Federal employees to the status of "second-class citizens," depriving them of their first amendment rights of free speech and free association. But Mr. President, what about the first amendment rights of the Federal employee to be left alone from the influence of his fellow employees?

The right to participate in political activities is not, and never has been, absolute. In U.S. Civil Service Commission against National Association of Letter Carriers, the Supreme Court recently sustained the constitutionality of that provision in title 5, United States Code, which prohibits Federal employees from taking an active part in political management or in political campaigns, the very provision H.R. 8617 would repeal.

The Court held that:

A major thesis of the Hatch Act is that to serve this great end of government—the impartial execution of the laws—it is essential that Federal employees not, for example, take formal positions in political parties, not undertake to play substantial roles in partisan political campaigns and not run for office on partisan political tickets. Forbidding activities like these will reduce the hazards to fair and effective government.

There is another consideration in this judgment: It is not only important that the government and its employees in fact avoid practicing political justice, but it is also critical that they appear to the public to be avoiding it, if confidence in the system of representative government is not to be eroded to a disastrous extent.

The Supreme Court has repeatedly held that the interests of society must be balanced against the interests of the individual. In this case, it is reasonable, and the lesson of history shows it is

necessary, to curtail the political activities of Federal employees in the interests of society and also in the interests of the employees. Federal employees know this. Impartial administration of the law without regard to personal convictions or political affiliations is required for a fair and efficient Government.

Even if intensive involvement in politics does not taint an employee's administration of the law—an unlikely situation—it would certainly taint the public's perception of Government affairs. More than a few citizens, one suspects, would be less willing to comply voluntarily with Internal Revenue Service regulations, were the Regional Director of the Revenue Service also the manager of a Governor's campaign.

Moreover, the interests of the vast majority of Federal employees, those with no burning desire to become involved in partisan affairs, seem to require that restraints be placed upon the ambitions of their more politically inclined coworkers.

POLITICAL RIGHTS OF FEDERAL EMPLOYEES

Nor are the first amendment rights of Federal employees seriously impaired. While there are prohibited activities under the Hatch Act, there are at least as many permissible activities. An employee may register and vote in any election; express his opinion privately and publicly on political subjects and candidates; display a political picture, sticker, badge, or button; participate in the nonpartisan activities of a civic, community, social, labor, or professional organization; be a member of a political party and participate in its activities to the extent consistent with the law; attend a political convention, rally, fundraising function, or other political gathering; sign a petition as an individual; be politically active in connection with a question not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance or any other question or issue of a similar character; and serve as an election judge or clerk, or in a similar position to perform nonpartisan duties as prescribed by State or local law.

In addition, the Civil Service Commission has determined that in certain municipalities in Maryland and Virginia in the vicinity of the District of Columbia, or in a municipality in which the majority of voters are employed by the Government of the United States, it is in the domestic interest of employees for them to participate in local elections. In these designated municipalities, an employee is permitted to run in a partisan election if he runs as an independent

candidate.

Employees who reside in areas which do not qualify under the criteria cited above, may also run for public office and engage in political activity, but only in a nonpartisan election.

Nathan Wolkomir, president of the National Federation of Federal Employees, has capsuled the issue very clearly when he said:

Claims that the Hatch Act makes "second-class citizens" of Federal employees is just so much eyewash. Federal employees are not denied reasonable and appropriate participation in the political process. Oddly, many of those who moan most loudly about this moth-eaten cliché fail to exercise the basic and most elementary action of a citizen, namely, to register and vote.

Robert E. Hampton, Chairman of the U.S. Civil Service Commission, testified before the Senate Post Office and Civil Service Committee that a record number of people in recent years have expressed interest in Federal employment and most of them were well aware of the Hatch Act restrictions on their political activity if they accepted a Federal job. Evidently, these individuals don't think the Hatch Act makes them second-class citizens, Chairman Hampton said, and the political restrictions are not a deterrent to their seeking Federal employment.

Lastly, let us remember this all-important fact about the Hatch Act: It properly recognizes that one cannot administer the law impartially while advocating partisan reform.

On the one hand, the Hatch Act does not deny a citizen his right to manage a political campaign or to run for political office. But let that citizen stay out of Federal employment.

On the other hand, the Hatch Act does not deny the qualified citizen the privilege of a secure, well-paying post in the civil service. But let that citizen stay out of partisan politics. In short, the message of the Hatch Act is this: One has no inherent right under the Constitution to be a Federal employee and a politician at the same time. To put it in colloquial language: you cannot have it both ways; you cannot have your cake and eat it, too.

Let us remember, Mr. President, that the Hatch Act was enacted by Congress 36 years ago as an answer to widespread scandals and abuses, such as the solicitation of Government workers for political contributions and the hiring and firing of workers on the basis of political affiliations.

My amendment goes to the heart of this problem. By prohibiting one employee from soliciting another and from being solicited by another, we will have done what the present Hatch Act was designed to do.

Congress passed the Hatch Act in 1939, at a time of extensive corruption in the Federal workforce. Under the New Deal, the Works Progress Administration—WPA—funded wholly or partially over 3 million public works jobs in areas of high unemployment. Public indignation grew over reports of widespread financial solicitation by Democratic Party officials from WPA workers as a condition of continued WPA employment, salary advancement, and favorable job assignment.

As a result of these allegations of political corruption and accepting such contributions, the Senate created a special investigating committee headed by Senator Morris Sheppard of Texas. The Sheppard committee's report of January 3, 1939, contained numerous documented cases of political coercion that occurred in 10 States. These examples of coercion dealt with the soliciting and the receiving of financial contributions from WPA workers, which my amendment hopes to cure.

Committee investigators obtained affidavits from WPA workers which showed extensive solicitation of financial contributions from WPA workers by WPA supervisors closely associated with local political organizations which, in turn, were affiliated with the National Democratic Party.

Continued employment on WPA projects, as well as promotions and favorable work assignments, were often contingent upon direct financial contributions to local party organizations or the purchase of tickets to various fundraising functions.

In Kentucky, for example, the committee found that \$70,000 had been raised for the Governor's campaign from State employees whose salaries had been partly or wholly derived from funds paid by the U.S. Treasury, and that \$24,000 had been raised for a Senator's campaign from WPA employees and from other State employees receiving Federal money.

The committee found particular abuses by administrative personnel in the WPA in Kentucky; specifically, they had made a systematic canvass of certified WPA workers, that workers had been hired and fired on the basis of political affiliation, and that WPA workers had been solicited for political contributions.

Based on these findings, the Sheppard committee recommended that Congress pass legislation to prohibit the political coercion and political contributions of all Federal employees. The spectacular evidence of patronage politics prompted Congress to respond quickly, and the Hatch Act was enacted in the same year.

Now, 36 years after the enactment of the Hatch Act, after a very thorough investigation by the Sheppard committee of political coercion, political financial solicitation, and receiving of contributions, proponents of H.R. 8617 seek to repeal the time-tested provisions of the Hatch Act which have protected Federal employees for so long and so well.

I implore my colleagues not to forget the sordid political past which prompted an earlier Congress to enact the 1939 law and to strike down the current effort to permit all-out partisan politics at the Federal level and open the way for a return to the "spoils system" of the past.

This is not the time to open the floodgates to all-out politicking by Federal employees. I call attention to a letter from an outstanding organization, the National Civil Service League, to the chairman of the Senate Post Office and Civil Service Committee dated December 8, 1975. I would like to read excerpts from the letter, which begins by stating the National Civil Service League opposes H.R. 8617 and other similar legislation as follows:

These bills, which would virtually repeal the Hatch Act, are, in our opinion, inimical to merit employment and apt to lead to a rebirth of the "spoils system" against which the League has fought for more than 90 years. Without the Hatch Act or comparable limitations on employees' political activities, our traditional civil service system, and with it the impartial and efficient transaction of the public's business, would be seriously jeopardized. At best, there would be constant tension and suspicion between politically active employees and their co-workers, by all indications a majority, whose primary concern is that their careers continue to be dependent on performance rather than political allegiance. At worst, the fears of political coercion and intimidation voiced by many federal employees would be realized.

The league goes on further and says:

Although it is true that H.R. 8617 contains provisions designed to prevent coercion, the League feels that they are inadequate to combat the kind of subtle and indirect intimidation which would be most likely to occur. Some will argue, too, that in the absence of the Hatch Act's restrictions, employee organizations will protect their members. This may be a remedy for some workers, though the capacity and will of employee groups to perform this task remains to be seen. Moreover, this provides no solace for mostly unorganized Government executives—precisely the group which was most sorely pressed during the Watergate-related assault on the merit system.

I urge my colleagues to give careful consideration to the views of the National Civil Service League, which has been the watchdog of the merit system since 1883 when it was responsible for

the passage of the original Pendleton Civil Service Act. With its long history in behalf of merit employment, the National Civil Service League has ample reason to fear the rebirth of the "spoils system" through the enactment of H.R. 8617. I fully share that concern and commend the league for its strong opposition to the bill before the Senate.

Amendment No. 1276, which is the amendment we are now considering, is a step toward keeping partisan politics out of the civil service merit system. It would prohibit the receiving and giving of political contributions between all employees—not only between the "superior" or supervisor and the employees below him. This would minimize the opportunities for political pressures and coercion among all Federal personnel.

As pointed out earlier, my amendment would have the other objective of protecting employees from being pressured into providing not only financial contributions but, just as important, from being pressured into providing non-monetary "personal services." These "personal services" include such political activities as ringing doorbells and handing out literature.

We in Congress are debating Hatch Act legislation at a very sensitive period in our Nation's history. As we are all aware, most of the American public take a critical and cynical view of the operation of our Government, particularly at the Federal level. Their disenchantment with the conduct of the Government is reflected in the public's low esteem as reported in public opinion polls.

If the word "politics" was a dirty word before, I am afraid it is regarded even more so today, in the wake of the Watergate experience and the many other political scandals since then. We should, therefore, be very much aware of the skeptical, hostile attitude of Americans generally toward any efforts to open up partisan politics to nearly 3 million Federal employees.

Since its enactment, the Hatch Act has served our Nation well. It has kept our Federal Civil Service system impartial, independent, and relatively free from partisan politics. It has assured the American people that their Government is operated by civil servants protected by the Hatch Act so they can render fair, nonpartisan, efficient public service.

My amendment would help prevent the scuttling of the Hatch Act and provide the protection the Federal employees want and should have. Therefore, I urge its approval.

The PRESIDING OFFICER. Who seeks recognition?

Mr. FONG. I suggest the absence of a quorum, Mr. President.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. McGEE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McGEE. Mr. President, in accord with a colloquy with the Parliamentarian just before we started the discussion of Senator Fong's amendment No. 1276, I now ask unanimous consent that the committee amendments be agreed to en bloc and, as agreed, be considered as original text for the purposes of amendment.

The PRESIDING OFFICER. Is there objection?

Mr. FONG. I have no objection.

The PRESIDING OFFICER. The question is on agreeing to the committee amendments en bloc.

The committee amendments were agreed to, as follows:

On page 5, beginning with line 8, insert the following:

"(b) Nothing in this section authorizes the use by any employee of any information coming to him in the course of his employment or official duties for any purpose where otherwise prohibited by law.

On page 5, at the beginning of line 13, strike "(b)" and insert "(c)";

On page 6, in line 22, strike "duty, etc.;" and insert "duty";

One page 8, beginning in line 17, strike out: "occurs. The preceding sentence shall not apply to the extent an employee is otherwise on leave."

And insert in lieu thereof: "occurs, unless the employee is otherwise on leave."

On page 9, in line 9, strike "foregoing";

On page 10, in line 11, strike "year," and insert "year";

On page 13, beginning in line 8, strike "a notice by certified mail, return receipt requested" and insert "a written notice by certified mail";

On page 14, in line 17, strike "duly";

On page 14, in line 20, strike "duly filed," and insert "filed within the time allowed,";

On page 18, in line 11, strike "Board. Thereupon the Board shall certify", and insert "Board which shall then certify";

On page 25, under "Subchapter III—Political Activities, Sec. 7325," strike "duty, etc.;" and insert "duty";

Mr. McGEE. It is my understanding, Mr. President—and I propound this to the Parliamentarian—that the Fong amendment is now officially in order and that we may proceed under that order and seek to secure enough bodies for the yeas and nays.

The PRESIDING OFFICER (Mr. GLENN). The Senator is correct.

Mr. McGEE. I will have just about a minute of comment on the Senator's amendment, and then we would be prepared to have another quorum call to permit the rounding up of the troops in order to get the yeas and nays so that

we might proceed to vote on the Fong amendment.

In behalf of the—does the Presiding Officer have a declaration he wants to make? He appeared to have something imminent.

The PRESIDING OFFICER. I am sorry, I did not understand the question.

Mr. McGEE. I saw the Parliamentarian directing marching orders, and I thought maybe there was something I had intruded upon that we could not live without from the occupant of the Chair.

[Laughter.]

The PRESIDING OFFICER. Not at all. I had asked the Parliamentarian if we were under time limits, which we are not.

Mr. McGEE. I see.

I want to say to the occupant of the Chair, the distinguished Senator from Ohio, that he had some eloquent remarks in one of our Sunday newspapers on nuclear proliferation that I wanted to commend him for and which I took the liberty of calling to the attention of people across the country so they might share the wisdom that was contained therein.

The PRESIDING OFFICER. I thank the distinguished Senator from Wyoming.

Mr. McGEE. The Chair is not entitled to make a speech, so he can say nice things about me the next time he gets the floor. [Laughter.]

My objections, in behalf of the majority of the committee, reflect the fact that the Fong amendment was considered by the committee and it was voted down 6 to 2. As I recall—and I reserve the right to adjust that by one number, I was uncertain about one member who was absent that day but, as I recall, it was about 6 to 2.

Mr. FONG. Why not make it 7 to 2.

Mr. McGEE. 7 to 2. I will accept that amendment from my colleague. In any case I did not want it to appear that the committee had not given due consideration to the proposal.

Now, the legitimate question for us to consider is, why did the committee decide to reject the Fong amendment when it was first considered?

I think the simplest explanation is that the Fong amendment appears to gut the pending legislation. It goes to the very heart of the matter. What it says is that Federal employees cannot voluntarily involve themselves in any meaningful way with political campaigns or political is-

sues. It would bar an employee who might be a candidate for an office from receiving assistance or contributions from his supporters who also worked for the Federal Government.

The bill simply says that these things cannot happen on the premises of the employer but must be voluntary and occur in one's own neighborhood, or wherever he wishes to traffic with those ideas, as a private citizen, so long as he does not take the employer's time or use the employer's location for those purposes.

Thus, to read the Senator's amendment to its ultimate meaning is to see a provision that would specifically deny the first amendment rights that all citizens are very jealous to preserve.

The Senator's amendment does have some of the restraints that are already in the measure that we are now considering. For example, prohibiting solicitation by superiors of those beneath them for political purposes. That is one of the grievances that exists under the present system.

The bill makes such solicitation not only illegal, but makes the penalties for breaking that proviso in the pending measure very severe.

For those reasons, on behalf of the majority of the committee that voted 7-2 against the Fong amendment, I would have to oppose the amendment here today.

Mr. FONG. Mr. President, the committee is composed of nine Members, six Democrats and three Republicans. One Republican decided to go with the Democrats, and that is why it was 7-2.

Mr. McGEE. Would the Senator agree that it would be equally fair to conclude that since the committee is split between Democrats and Republicans 2 to 1—6 to 3 is the same as 2 to 1 as—therefore, it would be fair to conclude that his own party is split by the same ratio on this matter, which is 2 to 1?

Mr. FONG. Two to one; yes.

Mr. McGEE. I thank the Senator.

Mr. FONG. Mr. President, there is no reason why we should not prohibit the solicitation or the giving of a contribution by one employee to the other when we have in this legislation which is before us on this floor, reported by the committee, a provision that the superior-subordinate relationship is such that the subordinate could not give a contribution to the superior and the superior could not solicit a contribution from the subordinate.

If that is so, by what stretch of the imagination do we say in this bill that it is all right for an employee who is not a superior to solicit another employee who is not a subordinate?

Here we have a relationship in which we can get down to cases. A situation in which we may have a superior, say Superior S. He is for Candidate X and his subordinate is Employee A. Employee A sees that Superior S is for Candidate X, and he knows that Superior S is the man who is going to decide whether he will be promoted, whether he will have a good job assignment; he will be a man who will say what his subordinate shall do.

So what does he do? What does he do as a logical human being? Is he going to fight his superior?

No, he does not. He goes out knowing what his superior wants. He goes out and solicits his fellow employees for political contributions because his fellow employees under this legislation can be solicited by him because he is not a superior to them.

Suppose we have another employee, Employee B, and we have Employee A doing this, trying to get on the good side of his superior, Superior S, by doing what his Superior S wants him to do?

What is this other employee, Employee B going to do, seeing that Employee A is soliciting contributions, so that Employee A will be favored by his superior?

Employee B, if he has any sense at all, will say, "Well, I have to do the same."

So it forces Employee B to do the same or suffer the consequences.

We know that Superior S need not ask Employee A to do that for him, to solicit Employee B, or Employee C, but knowing the circumstances, we have that kind of a situation.

This is the type of situation I am trying to get away from, in which pressure is brought upon the employee, whether the employee be his equal, his peer, to do things that he does not want to do.

My amendment will go to the heart of this so that an employee cannot solicit another employee.

My amendment also goes to the extent of saying that a political contribution also includes the ringing of doorbells and other "personal services." A superior in this legislation cannot tell a subordinate to do those things. But again, in a situation like that, Employee A knows what Superior S wants him to do. So he has been easily inveigled to go out and ring doorbells and pass literature just because he wants to get into the good graces of Superior S.

This is what I am trying to do, to keep them from using this kind of subtle political pressure on their employees. I ask that this amendment be approved.

Mr. President, I ask for the yeas and nays.

THE PRESIDING OFFICER (Mr. GLENN). Is there a sufficient second?

There is not a sufficient second.

Mr. FONG. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GARN. Mr. President, in approving Mr. Fong's amendments the Senate will go a long way in preserving the impartiality of our Federal work force. This work force, because of its very nature, should be impartial. It should not, in any way, be involved in the partisan political processes of our country. Our citizens, who are already submerged in Government regulations and paperwork, should not also be prevailed upon by a Government work force motivated by partisan politics. Without this amendment, the bureaucracy would be nothing less than a huge political machine, serving the needs and wishes of the party in power. It is very real that these employees would feel it necessary to keep those in power, in power, and those out, out.

Mr. President, let us discuss the central issue of this amendment, and the bill itself. What we are seeing here, by revising the Hatch Act, is nothing less than a power grab by the big unions to turn the Federal employees into a giant political machine. As one union leader put it, "If we can get this Hatch Act * * * bill into law, we can really get moving." Get moving where?

It is only too obvious where. Into the political process with such force that the Federal bureaucracy would be forever filled with political debts and deals making the impartiality of government a farce.

The Washington Star editorialized:

Opening the federal service to partisan politics is almost sure to give union leaders more muscle. The Hatch Act tends to inhibit union activity by federal employees . . . It is no coincidence that the AFL-CIO, to which the biggest of the federal employee unions belong, is pushing strongly to remove the Hatch Act restrictions. George Meany and Company would love to be able to enlist or pressure the giant federal service into the AFL-CIO's political causes. The possibility would exist that union leaders, rather than elected officials and top career employees, would be calling the shots in the federal service.

Robert Hampton, Chairman of the Civil Service Commission, in testimony before the House Subcommittee on Em-

ployee Political Rights and Intergovernmental programs, said:

And what of the employee caught in the switches because he believes administrations may change and is uncertain whether the promotion action will occur prior to election day in November or after inauguration day in January? Can we safely say that even the most enlightened administrator, faced with last-minute promotion decisions before leaving office, will not consider the partisan political activities of the employee which either sought to keep him in Washington or assisted in sending him home? History tells us we cannot.

Mr. Hampton goes on to say:

If the opportunity to assert partisan political influence or power is available, it will be exercised. This seems to be the one void that someone is always willing to fill.

(It is) . . . very plain that whatever political activity is permitted to federal employees will quickly become that which is required of them.

Very simply, what Mr. Hampton is saying is that where now there is no pressure, by lifting the restrictions, pressure could not only be exerted, but it would become a permanent part of the Federal employees' job. The choice of whether to work or not to work for a candidate or cause would not be based solely upon the individual's belief, but in the opportunities for promotion that lay ahead. So instead of performing for the public good, he would be performing in accordance with the political desires of his superior or union steward.

Now, I am sure, Mr. President, that proponents of this bill are downplaying the fears that my colleagues and I are raising today. The supporters of this bill are saying that we are exaggerating fears of pressure and reprisal that will result should this bill be enacted. Let us ask the thousands of Federal workers now in the civil service who responded to numerous surveys agreeing that pressure, coercion, or other subtle forms of influence by their superiors and union officials would take place if the Hatch Act restrictions were lifted.

Overwhelmingly, these Federal employees rejected any revision of the Hatch Act. Is not it the duty of the national legislator to, as accurately as possible, reflect the views of our voters? Is it public policy? If those people directly involved in the civil service, from its Chairman down through the ranks, oppose tampering with the Hatch Act, then why act contrary to their desires?

Mr. President, the amendments to the bill which I am favoring would prevent corruption, political debts, and seamy deals in the bureaucracy.

The clear vision and bright light of impartiality in the Federal service must not be dimmed.

The amendments offered by Mr. FONG are responsible and clear visioned.

I strongly urge their adoption.

In conclusion, the administration has indicated that, unless these amendments are included in the final bill passed by this body, this piece of legislation will be vetoed.

Mr. FONG. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The question is on agreeing to Mr. Fong's amendment No. 1276. The yeas and nays are ordered, and the clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Texas (Mr. BENTSEN), the Senator from New Hampshire (Mr. DURKIN), the Senator from Mississippi (Mr. EASTLAND), the Senator from Hawaii (Mr. INOUE), the Senator from Washington (Mr. JACKSON), and the Senator from California (Mr. TUNNEY) are necessarily absent.

I further announce that, if present and voting, the Senator from Washington (Mr. JACKSON), and the Senator from New Hampshire (Mr. DURKIN) would each vote "nay."

Mr. GRIFFIN. I announce that the Senator from North Dakota (Mr. YOUNG) is necessarily absent.

The result was announced—yeas 38, nays 54, as follows:

[Rollcall Vote No. 55 Leg.]

YEAS—38

Allen	Garn	Pearson
Baker	Goldwater	Percy
Bartlett	Griffin	Proxmire
Beall	Hansen	Ribicoff
Bellmon	Haskell	Roth
Brock	Helms	Scott, Hugh
Bumpers	Hruska	Scott,
Byrd,	Laxalt	William L.
Harry F., Jr.	Long	Stafford
Curtis	Mathias	Talmadge
Dole	McClellan	Thurmond
Domenici	McClure	Tower
Fannin	Nelson	
Fong	Packwood	

NAYS—54

Bayh	Hart, Philip A.	Montoya
Biden	Hartke	Morgan
Brooke	Hatfield	Moss
Buckley	Hathaway	Muskie
Burdick	Hollings	Nunn
Byrd, Robert C.	Huddleston	Pastore
Cannon	Humphrey	Pell
Case	Javits	Randolph
Chiles	Johnston	Schweiker
Church	Kennedy	Sparkman
Clark	Leahy	Stennis
Cranston	Magnuson	Stevens
Culver	Mansfield	Stevenson
Eagleton	McGee	Stone
Ford	McGovern	Symington
Glenn	McIntyre	Taft
Gravel	Metcalf	Weicker
Hart, Gary	Mondale	Williams

NOT VOTING—8

Abourezk	Eastland	Tunney
Bentsen	Inouye	Young
Durkin	Jackson	

So Mr. Fong's amendment (No. 1276) was rejected.

Mr. McGEE. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Several Senators addressed the Chair.

Mr. McGEE. Mr. President, I ask unanimous consent that Pam Weller, of Senator STONE's staff, be granted floor privileges for the duration of the consideration of this bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McGEE. Mr. President, I announce for the benefit of Senators present that we are proceeding immediately to a second amendment proposed by our distinguished colleague from Hawaii that splits off a portion of the amendment we just voted on. We shall discuss that in a moment, and there will not be any protracted delay.

Mr. FONG. There will not be any protracted delay.

Mr. HUMPHREY. Mr. President, will the Senator yield?

Mr. McGEE. I will, indeed. Before we commence, I wish to make sure Members understand what is about to happen. There will be a rollcall vote on the second Fong amendment, and it will not be very many minutes away.

Mr. FONG. It should not be more than 15 minutes.

Mr. McGEE. Why does the Senator not ask for the yeas and nays while we have Senators present?

Mr. FONG. Mr. President, I ask unanimous consent that before I bring up my second amendment, I be permitted to ask for the yeas and nays.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FONG. Mr. President, I ask for the yeas and nays on my second amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. McGEE. Mr. President, I ask unanimous consent to yield to the distinguished Senator from Minnesota.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. McGEE. I am glad to yield to our colleague.

Mr. DOMENICI. Mr. President, I ask unanimous consent that Mickey Barnett

of my staff be granted floor privileges for the remainder of the discussion on this bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming has the floor.

Mr. McGEE. Yes. Our agreement regarding the procedure here is that the pending business will now be the second amendment by the Senator from Hawaii, and I assume that he will be recognized.

Mr. FONG. Mr. President, I shall first call up my amendment and then I will yield.

The PRESIDING OFFICER. The Senator from Hawaii is recognized.

AMENDMENT NO. 1275

Mr. FONG. Mr. President, I call up my amendment No. 1275.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Hawaii (Mr. FONG) proposes an amendment No. 1275.

Mr. FONG. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 4, strike out lines 3 through 6. On page 4, line 7, strike out "(5)" and insert in lieu thereof "(4)".

On page 4, line 10, strike out "(6)" and insert in lieu thereof "(5)".

On page 6, strike out lines 4 and 5, and insert in lieu thereof the following:

"(3) knowingly give or hand over a political contribution to another employee; or".

On page 6, lines 10 and 11, strike out "with respect to whom such employee is a superior".

Mr. FONG. Mr. President, I yield to the distinguished Senator from Illinois.

Mr. PERCY. I thank the Senator.

Mr. President, I cannot in good conscience support H.R. 8617, which in my opinion would repeal much of the Hatch Act and would do great damage to our electoral process.

Frankly, I am surprised that such legislation is being seriously considered at this particular point in our political history. Surely the turmoil of Watergate has demonstrated that what we need is less, not more, partisan influence in the political process.

Since this legislation passed the House in October I have been reassured in my own convictions by hearing from literally thousands of Illinoisans on this issue. Ninety-five percent of those who have written are strongly opposed to repeal-

ing the protection presently afforded Federal employees by the Hatch Act. To their way of thinking, and to mine, this legislation, if enacted, will invite wholesale abuse of the Federal civil service by those within as well as without the Federal Government.

The point behind the present Hatch Act is to balance the need for an effective and impartial civil service with the need to preserve the basic rights of citizenship for Federal employees. I believe the Hatch Act as it stands is successful in striking a reasonable balance. I would certainly support changes in the law if Federal employees were in fact second-class citizens. But the facts do not bear out the allegation that present restrictions seriously infringe upon their rights of citizenship. They can run for office in nonpartisan elections, contribute money to political parties and candidates, and express opinions on political subjects privately and publicly. Specifically, I do not believe, as some argue, that Federal employees are being denied their first amendment rights. Nor did the Supreme Court, when in 1973 it upheld the constitutionality of the present law.

H.R. 8617 seeks to extend the opportunity for civil service employees to participate in politics, to allow them to run for political office on party ballots, raise money for political candidates and parties, and address party conventions and caucuses. I believe that to permit Federal employees to participate in this way would be to remove the effectiveness of the Hatch Act's protection for Federal employees from the political pressure of their superiors. The committee report states that the second of two purposes of this legislation is to prohibit the abuse of authority and the coercion of employees into nonvoluntary political activities of any kind. This is a laudable purpose. The Supreme Court stated in its 1973 decision that "the rapidly expanding Government work force should not be employed to build a powerful, invincible, and perhaps corrupt political machine."

Contrary to this intent, though, H.R. 8617 makes this result more rather than less likely. Without a prohibition on active forms of political activity, such as fund raising and running for office on a party ticket, employees are left to resist on their own the pressure, often subtle and hard to identify, of their employers. The bill sets up an elaborate mechanism to deal with such abuse and coercion by an employer. I see this as a clear indication that the authors of H.R. 8617 realize the difficulties inherent in monitoring such abuse and anticipate the violation of the new provisions.

The American people expect and deserve a merit, not a spoils system in Fed-

eral service. We must be diligent in insuring this. Although few would argue that the Hatch Act has been 100 percent effective, I am confident that an overwhelming majority of Americans support the basic intent of the act. I believe H.R. 8617 destroys those provisions of the act which make it successful in striking the balance between the opportunities for political involvement available to a citizen, and the need to insure an apolitical Federal service.

Mr. President, having lived in Cook County, Ill., all my life, having seen at both the county and the State levels the abuses wreaked upon employees of Government who are pressed into political service, who, in a sense, are coerced into making contributions out of their public payroll, and having seen the disastrous effect that this has had upon the two-party system, I certainly oppose H.R. 8617 in the strongest terms.

Again I say that I really cannot believe that the Senate of the United States, in the wake of Watergate, seriously would wish to move Federal employees in this direction in the electoral process.

Mr. FONG. Mr. President, I congratulate the Senator from Illinois for his excellent remarks. I know that he has been a student of the Hatch Act for a long time.

I agree with him that this bill is really a step backward, that it is not in the interests of the employees, nor is it in the interests of the Government, if this bill is passed.

Mr. HUMPHREY. Mr. President, will the Senator yield?

Mr. PERCY. I yield.

FEDERAL EMPLOYEES' POLITICAL ACTIVITIES ACT OF 1975

The Senate continued with the consideration of the bill (H.R. 8617) to restore to Federal civilian and Postal Service employees their rights to participate voluntarily, as private citizens, in the political processes of the Nation, to protect such employees from improper political solicitations, and for other purposes.

Mr. FONG. Mr. President, H.R. 8617 prohibits political solicitations only by a superior seeking contributions from those he supervises. The amendment I am proposing, No. 1275, would prohibit an employee from giving or soliciting a political contribution to any other employee,

whether the receiver is a superior or not. It is a very limited version of the previous amendment—amendment No. 1276—as it does not include “personal serv-

ices” as a political contribution. This amendment is to prevent coercion or political pressure by one employee against another.

In testimony during hearings before the Senate Post Office and Civil Service Committee, Carl Goodman, the General Counsel of the Civil Service Commission, adamantly opposed section 7324 of the bill because it would permit employees to solicit and receive political contributions from one another, so long as no superior-subordinate relationship exists and so long as it is not accomplished on the job. To make matters worse the bill has another provision which would amend the current criminal statutes so that such an exchange of contributions would no longer be punishable as a crime. Mr. Goodman contended that this would in fact permit the subtle coercion of Federal employees to contribute to political campaigns against their will and contrary to their own personal political convictions without any meaningful recourse.

“In our opinion,” Mr. Goodman said, “the inherent dangers in permitting employees to exchange political contributions with one another should be obvious.” Then he proceeded to emphasize his point with a hypothetical situation. Although I cited this illustration when I offered my previous amendment, I would like to repeat it now because it is also directly relevant to the amendment we are now discussing.

Here again is the hypothetical situation as given by Mr. Goodman:

A “superior” is known to be actively campaigning for candidate “X”. One of his or her subordinates, who is generally known to be personally close to the superior, or who is known to be the superior’s “right-hand man,” but is not superior to other employees within the definition set forth at § 7322(4), approaches other employees in front of the building, or in the parking lot, or at their individual residences, and solicits contributions for candidate “X”. Those employees so solicited must decide if it is expedient for them to either contribute or decline to contribute, being aware of the possibility that the superior may learn whether or not a contribution was made. They would also be aware that it would be extremely difficult, if not for all practical purposes impossible, to prove that any particular employee is promoted, or passed over for promotion, because he or she made a political contribution or failed to make a political contribution. There is no evidence to indicate that the superior instructed or even suggested to the subordinate that contributions should be solicited. Even if that had occurred, it is unlikely that such evidence could be obtained, since the subordinate would not be in violation by soliciting and would have no reason to implicate the superior.”

Mr. Goodman believes that such a

situation as described in the hypothetical situation cannot arise today since the superior cannot be actively campaigning or even if he could, his "right-hand man" could not be engaged in solicitation or other political management.

In Mr. Goodman's opinion, a case such as the one he illustrated could not be successfully prosecuted under H.R. 8617.

His opinion on this matter should carry a great deal of weight, since he is the Civil Service Commission's chief enforcement officer of Hatch Act cases coming before the Commission.

I completely agree with Mr. Goodman that employees should not be permitted to be involved in soliciting or receiving contributions for partisan political purposes.

Another case: Employee A is aware of a vacancy which will be a promotion for him. He also is aware that the person who will make the selection—call him his superior S—is actively supporting a particular candidate. Add to that the fact that employee B, who will be in competition for the vacancy, has contributed to support S's candidate and he is also busily soliciting monetary contributions from his fellow employees. Employee A now must make a decision as to what he must do to equalize the efforts of employee B. Can he really afford not to contribute to S's candidate? Can he really afford not to get busy and solicit monetary contributions from his fellow employees?

Suppose he does not like S's candidate. Can he really afford to make a contribution to the opponent of S's candidate? Can he really afford to solicit his fellow employees in behalf of the candidates S opposes? The answer is obvious: he will be forced, if he has any commonsense, to go with his superior, because that is where his promotion lies.

These two situations, Mr. President, are the type of quandary we are putting our Federal employees in when we allow them to solicit their fellow employees or allow them to be solicited by their fellow employees.

Therefore, I strongly urge the adoption of my amendment.

Mr. McGEE. Mr. President, I want to say very quickly, so as not to delay proceeding with the rollcall on this amendment, that this second amendment is woven of the same cloth as the preceding amendment in that it keeps the most serious and negative parts. What was dropped out of the first amendment was the lesser of the considerations at stake, and in behalf of the 7-to-2 majority of the committee which voted on the bill, I would have to represent that committee position, by saying that we also strongly oppose this second amendment.

With all due respect, I must remind my colleague, as he ticks off case A and case B and case S, that he curiously left out case M.

"M" stands for Malek. Now, neither party was proud of the Malek operations under the existing Hatch Act. This is not a monopoly of any one political party. The Democrats have done it, too, on earlier occasions.

The point is, that this bill puts the finger where it belongs. The point is that the abuses of the Hatch Act come from the top down. They have not been generated from the bottom up.

Yet what this pending amendment would do is seek to babysit Federal employees as though they are children; as though they are not entitled to be first class citizens but instead are immature public individuals with no sense of the responsibilities of citizenship.

The bill that is pending contains provisions which prohibit the coercing of any employee by his superior—no coercive solicitation. It bars solicitations by administrators above, and it bars involuntary solicitations by anybody at any level.

It makes it illegal for any person to extort a political contribution in any form for any reason, and the penalties for doing that are made much more severe by the measures in this bill.

What the bill does not do, and this is important: it does not shut off or wipe out voluntary political activity among employees as private citizens, off the premises and off the job. So if their job ends at 5 p.m. and they want to go out and work politically in the evening, on their own, because they believe in a local Democrat or a local Republican running for county commissioner or running for the State legislature, or running for some other higher office, they ought to have the option, as responsible citizens to do just that. That is what this bill says.

For these reasons, I am compelled to oppose my colleague's amendment. I would recommend that the Senate, after voting down the first of the Senator's amendments, follow the same pattern in rejecting this one, because it is in effect part of that same amendment.

Mr. FONG. Mr. President, the distinguished Senator makes a strong point concerning the coercive prohibition under the bill which is before us. Under the present Hatch law, there is absolutely no solicitation by a Federal employee allowed, so there was no need for this prohibition against coercion. If we allow this to go on—that is, a solicitation of one employee by the other—we will be opening this wide open to the same kind of WPA solicitation which really brought on the Hatch Act. The Sheppard com-

mittee had an extensive investigation of this situation in 10 States and found that this was very, very prevalent, that WPA workers were fired and hired, because of their contribution or noncontribution to the political cause, and we will be going right back to that.

This bill which is before us recognizes the superior-subordinate relationship. It says that a superior cannot solicit from a subordinate. If a superior cannot solicit from a subordinate, why is it not just as bad for a subordinate to be solicited from a subordinate, when he knows that his superior is backing a candidate and he wants to get into the good favors of that superior? This amendment of mine prohibits this employee from doing just that.

Mr. McGEE. Mr. President, I shall have to add to my colleagues' comments that it would come, I think, as a rather startling revelation to the thousands upon thousands of career public employees in the Federal Government that their role may be likened to that of a WPA laborer during the depression.

The Senator is right in reminding us that out of those depression days, when much of America collapsed, there was built up a great dependence on any kind of work. The attempt was to try to restore human dignity in the process, and a part of that process was also in many cases, to try to collect political dues of some sort. But I should regret it if any suggestion emerged from this colloquy that would indicate that Federal employees today are in any way identifiable with the WPA days.

We have the Hatch Act to prevent the abuses of the WPA days. Today we have a professional group of career people who are dedicated to public service. But they are also citizens of the United States of America and, perhaps it is fitting that we should recognize that in a Bicentennial Year such as this.

All we are asking, Mr. President, is that they not be denied the same options and opportunities, outside of the possible areas of abuse, as other citizens. That they have the right to run for local office or other higher office for which they might think they are eligible. That they have the right to participate in political activity off the job and off the premises.

It seems to me it behooves us to make certain that these career people who must be judged on the basis of their career performance need also to be judged as mature, responsible citizens.

This bill protects them from abuse and it protects them from any involuntary activity that anyone in his misguided notion might attempt to impose. We also seek to protect the voluntary deci-

sion on the part of an adult citizen to indulge in political activity as a citizen off the job and off the premises.

Mr. FONG. Mr. President, I do not wish to suggest that our Federal employees, who are very, very fine workers, are WPA workers. I just want to say that the Hatch Act was the result of the excesses of financial coercion of WPA workers who were only making 30 cents an hour. All of you who know anything about WPA work know they were paid only 30 cents an hour, 8 hours a day, \$2.40 a day. Even though they made only \$2.40 a day, they were pressured by these superiors, these bosses, to contribute to the campaign of candidates.

Now, the distinguished chairman makes a point that the bill protects Federal employees. Let me point to the fact that the National Federation of Federal Employees, headed by Mr. Wolkimir, with a membership of 136,000 members, had a survey as to what they wanted to do with the Hatch Act.

Eighty-nine percent of the members who responded said they were strong in support of the present Hatch Act; only 10 percent wanted minor changes, and only 1 percent advocated repeal.

This bill which is before us is advocating repeal of the heart of the Hatch Act, and let us not be fooled by that, by the prohibition against coercion.

We have another case in point. We have another example of what the Federal employees are thinking about. Representative FISHER, who has the most Federal employees, outside of the District of Columbia, found that of the one-third to 40 percent of his constituents who are Federal employees, indicated, and he reported, that 59 percent were against changing the Hatch Act, out of a total of 20,000 responses. His mail showed that civil service employees who want the status quo outnumbered others 8 or 10 to 1.

Representative GILBERT GUDE, who has the second greatest number of Federal employees in his district, says that his mail reflected the same type of opposition to the repeal of the Hatch Act as his colleague, Congressman FISHER.

Representative HOLTZMAN, Democrat of New York, says her poll shows there was a 2-to-1 vote against weakening the Hatch Act, according to her questionnaire.

According to the career civil service members of the Federal Executive Alumni Association, only 2 out of 3,000 members polled wanted the Hatch Act changed.

In 1966, when the survey was made by the Michigan University survey team, only 3 percent said they wanted the

Hatch Act repealed.

So you see, Mr. President, there is strong opposition by the Federal employees themselves to having this act changed. I think we are doing a great disservice to the Federal employees by allowing them to be able to solicit from their fellow employees monetary contributions or whatever contributions may be asked for any candidate.

I think this amendment of mine is a good amendment. If we prohibit superiors from soliciting from their subordinates, why can we not prohibit an employee from soliciting another employee?

Mr. McGEE, Mr. President, I shall only take 2 minutes, because both of us are eager to move onto the rollcall vote on this amendment. I would like to say that my colleague has used again a word that has been employed over and over to alarm public employees. The word is "repeal."

Nobody is repealing the Hatch Act. We are upgrading and modernizing it before it is wiped out, because of the way it is abused. It is imperative that the Hatch Act, with its protection of an employee against solicitation or abuse or fear of something that his superiors may seek to extract from him, does not go by the board. This pending measure intends to make sure that such a thing does not happen.

What do the public employees think about the bill? It often depends upon whether they have heard scare stories about repealing the Hatch Act, for one thing. Of course, they oppose repeal. I oppose repeal, and it is time we quit permitting that word to enter the lexicon of those who discuss this bill.

I ask unanimous consent to have printed in the RECORD a list that is longer than I would have time to read. It is a list of a cross section of Americans who endorse the substance of the pending measure.

There being no objection, the listing was ordered to be printed in the RECORD, as follows:

PARTIAL LISTING OF ORGANIZATIONS IN SUPPORT OF FEDERAL EMPLOYEES' POLITICAL ACTIVITIES ACT OF 1975—HATCH ACT REFORM

A. Phillip Randolph Institute, Cleveland, Ohio.

American Civil Liberties Union.

American Federation of Government Employees.

American Postal Workers Union.

Americans for Democratic Action, Greater Washington Chapter.

Association of Civil Technicians (National Guard).

International Association of Firefighters.

International Conference of Police Associations.

Laborers International Union of North America.

Montgomery County (Maryland) Congressional Watch.

National Alliance of Postal and Federal Employees.

National Association for the Advancement of Colored People.

National Association of Government Employees.

National Association of Letter Carriers.

National Association of Postal Supervisors.

National Association of Retired Federal Employees, St. Louis, Mo.

National Association of Social Workers.

National Post Office Mailhandlers Union.

National Rural Letter Carriers Association.

National Treasury Employees Union.

New Democratic Coalition.

New York Criminal and Civil Courts Association.

New York Law Journal.

Prince George County (Virginia) Civic Association.

Professional Air Traffic Controllers Organization.

Public Employees Department, AFL-CIO.

Radio Station WMAL, Washington, D.C.

Southern Christian Leadership Conference.

Teamsters Joint Council 13, St. Louis, Mo.

Washington Teachers Union, American Federation of Teachers, AFL-CIO.

Women's Political Caucus, District of Columbia.

Mr. McGEE. As far as I am concerned, I am ready to proceed.

Mr. FONG. I just want to say this word. What are we trying to correct? The distinguished chairman says we are trying to correct the abuses. Now, where is the abuse as far as political management is concerned? Where is the abuse about collecting money? There has been no showing of any abuse before our committee. There has been no showing of any abuse in the management of political campaigns.

This bill before us is to change the heart of the Hatch Act. It does not repeal it technically but, in substance, it does repeal the heart of the Hatch Act because it says you can get into politics now and you can solicit money, which is now prohibited.

The PRESIDING OFFICER. Is all time yielded back?

Mr. McGEE. There is no time to yield back except our good intentions, and we both have good intentions, Mr. President.

The PRESIDING OFFICER. The yeas and nays have been ordered. The question is on agreeing to the amendment of the Senator from Hawaii. The clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Texas (Mr. BENTSEN), the Senator from New Hampshire (Mr. DURKIN), the Senator from Mississippi (Mr. EASTLAND), the Senator from Hawaii (Mr. INUYE), the Senator from Louisiana (Mr. LONG), and the Senator from California (Mr. TUNNEY) are nec-

essarily absent.

I further announce that, if present and voting, the Senator from New Hampshire (Mr. DURKIN) would vote "nay."

Mr. GRIFFIN. I announce that the Senator from Vermont (Mr. STAFFORD), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

The result was announced—yeas 38, nays 54, as follows:

[Rollcall Vote No. 56 Leg.]

YEAS—38

Allen	Garn	Percy
Baker	Goldwater	Proxmire
Bartlett	Griffin	Ribicoff
Beall	Hansen	Roth
Ballmon	Haskell	Scott, Hugh
Brock	Helms	Scott,
Buckley	Hruska	William L.
Byrd	Laxalt	Taft
Harry F., Jr.	Mathias	Talmadge
Curtis	McClellan	Thurmond
Dole	McClure	Tower
Domenici	Morgan	Weicker
Fannin	Packwood	
Fong	Pearson	

NAYS—54

Abourezk	Hart, Gary	Metcalf
Bayh	Hart, Philip A.	Mondale
Biden	Hartke	Montoya
Brooke	Hatfield	Moss
Bumpers	Hathaway	Muskie
Burdick	Hollings	Nelson
Byrd, Robert C.	Huddleston	Nunn
Cannon	Humphrey	Pastore
Case	Jackson	Pell
Chiles	Javits	Randolph
Church	Johnston	Schweiker
Clark	Kennedy	Sparkman
Cranston	Leahy	Stennis
Culver	Magnuson	Stevens
Eagleton	Mansfield	Stevenson
Ford	McGee	Stone
Glenn	McGovern	Symington
Gravel	McIntyre	Williams

NOT VOTING—8

Bentsen	Inouye	Tunney
Durkin	Long	Young
Eastland	Stafford	

So Mr. FONG's amendment (No. 1275) was rejected.

Mr. McGEE. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. STONE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1277

Mr. FONG. Mr. President, this amendment will not take too long. I call up my amendment No. 1277, and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Hawaii (Mr. FONG) proposes an amendment numbered 1277:

Mr. FONG. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. Fong's amendment (No. 1277) is as follows:

On page 6, line 11, strike out "or".

On page 6, line 21, strike out the period and insert in lieu thereof a semicolon and "or".

On page 6, between lines 21 and 22, insert the following new subparagraph:

"(C) from another employee (or a member of another employee's family) with respect to whom such employee is a union official."

Mr. FONG. Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. FONG. Mr. President, I ask unanimous consent that Senator DOLE's legislative assistant, Bob Downen, may have

the privilege of the floor during the consideration of and voting on H.R. 8617.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FONG. I now yield to the Senator from Arizona.

Mr. FANNIN. Mr. President, I ask unanimous consent that Judi Ford of my staff be given floor privileges during the consideration of and voting on H.R. 8617.

The PRESIDING OFFICER. Without objection, it is so ordered.

HATCH ACT REPEAL: SECOND CLASS NONSENSE

Mr. FANNIN. Mr. President, the Hatch Act was originally passed in 1939 as a result of nefarious political activities which were uncovered during previous election campaigns. Now the Congress is being asked to repeal the provisions of this law which are designed to prevent corruption and coercion of Government employees.

As my colleagues are aware, Federal civil service employees are "hatched", that is, they are prevented by law from engaging in certain political activities and making political contributions in an election campaign. The essential purpose of the Hatch Act is to prevent the use of Federal bureaucrats in political election campaigns at taxpayers' expense, without their approval. In addition, that law is designed to preserve the political independence of civil servants so that political pressures will not keep them from engaging in the public interest. It would also prevent a situation where elected officials would be beholden to Government employees for support. In light of the recent lobbying efforts of many bureaucrats and public employee unions in behalf of government pay raises, I can foresee tremendous problems for the country if the Hatch Act is now repealed.

In its opinion upholding the constitutionality of the Hatch Act, the Supreme Court stated that its decision:

... would no more than confirm the judgment of history, a judgment made by this country over the last century that it is in the best interest of the country, indeed essential, that federal service should depend on meritorious performance rather than political service.

Mr. President, this statement, expressed so eloquently by the Court, sums up my position against repeal or relaxation of the prohibitions on political activity by civil servants embodied in the Hatch Act.

Those who would change the law contend that Federal civil servants are being treated as "second-class citizens" because they cannot engage in politicking to the same extent as private employees. In my opinion, this argument is "second-class nonsense."

Under the law, Government workers have the same right to register and vote as anyone else. They are free to express their political preferences and to support the candidate of their choice, even with financial contributions, if they so desire.

In short, the Hatch Act does not in any way restrict the franchise of Government employees. They can be as politically outspoken as anyone else. And anyone who thinks that there is no politicking done in the civil service is naive.

As Howard Flieger stated recently in U.S. News & World Report:

Nobody argues that the Hatch Act is perfect. But it does effectively prevent that which it was designed to prevent: It makes certain that no candidate or party can convert the huge federal bureaucracy into a political machine.

The Act has sheltered the rank and file from any spoils system of patronage rewards for the party faithful. No office holder can go through the government hiring and firing at will on the basis of politics. No one can tell civil service employees how to vote, and keep them in line with threats of pay day reprisals.

They cannot be coerced into party work. They cannot perform the nuts-and-bolts jobs of a campaign such as soliciting funds, manning headquarters telephones or serving as chauffeurs to ferry the voters to the polls on behalf of any ticket.

Does this make them second-class citizens? Hardly. The odds are that those public servants who are sincerely interested in Government performance—and that means the vast majority of them—welcome the shield that stands between them and party affairs...

Congress felt safeguards against politicizing the bureaucracy were prudent back when federal employees were counted in the "hundreds of thousands."

It is difficult to follow the reasoning of those who argue such insurance is no longer needed—now that the number of Govern-

ment workers (not counting the military) has grown to more than 2.5 million.

It is evident that the proponents of repeal are substantially motivated by political considerations. The Hatch Act has worked well since its adoption, and the civil service today remains untarnished by the taint of corruption. There is obviously no pressing need to change the law. Polls have indicated that the people do not favor a change. Only certain segments of organized labor, specifically the American Federation of Government Employees and the National Association of Letter Carriers, are pushing for Hatch Act reform. I find myself in agreement with the largest independent union of Government workers, the National Federation of Federal Employees, which predicts that changes in the act will result in political abuses and seriously harm the merit system in government.

Mr. President, the Hatch Act is worth keeping. As the editor of the Phoenix Gazette pointed out:

Letting federal workers be political activists would, in effect, set up a special class of citizens in a position to exercise more power in and over the government than the now second-class citizens—those not employed by the government.

I agree with the opinion of the Arizona Republic's, another Arizona newspaper, that it "will be a sad day for—the 2.5 million workers on the Federal payroll—if union bosses are given a green light to browbeat them into furthering the bosses' political aims."

Mr. President, I ask unanimous consent that the complete texts of two editorials from the Phoenix Gazette of June 27, 1975 and the Arizona Republic of November 2, 1975 be printed into the RECORD.

There being no objection, the editorials were ordered to be printed in the RECORD, as follows:

[From the Phoenix Gazette, Jan. 27, 1975]
HATCH ACT IS WORTH KEEPING

Considering how much the government is withholding from paychecks, we are all working for Washington, at least a lot of the time. But only (only!) 2.5 million of the total population are bonafide federal employees and therefore subject to the Hatch Act, which restricts political activities.

Congress is giving the Hatch Act the hardest look it has had in eight years, mainly under pressure from the AFL-CIO, which has three affiliated unions with "Hatched" members.

But not all unions are in favor of being unhitched from Hatch. "This is nothing more than the old AFL-CIO pitch for muscle and power," charges Nathan Wolkomir, president of the National Federation of Federal Employees. "It's a move for money and more

organizing influence." Wolkomir says the AFL-CIO leaders want the Hatch Act restrictions lifted so that they can use the unions' membership as "a power base from which they can control the federal government."

Passed in 1939 to protect New Deal employees from political exploitation, the Hatch Act prevents government employees—including postal workers, the largest single group—from canvassing voters, raising funds, driving voters to the polls, and from running for major office.

Defenders of the Hatch Act say that, in addition to protecting employees from coercion (for example, being forced to buy fund-raising dinner tickets), it limits the possibility of an employee's political views interfering with public work; it prevents the party in power from using the civil service as a political machine, thus inviting a return to the spoils system, and it sustains public confidence in the impartial administration of the people's business.

Opponents argue that repeal of the Hatch Act "will raise federal and postal workers from their present second-class citizenship to first-class, where they belong."

There is something to be said for this argument, but it is outweighed by the drawbacks to repeal. Letting federal workers be political activists would, in effect, set up a special class of citizens in a position to exercise more power in and over the government than the new second class citizens—those not employed by the government.

Congress would be well advised to resist relaxing the Hatch Act.

[From the Arizona Republic, Nov. 2, 1975]

GUTTING THE HATCH ACT

Congress passed the Hatch Act in 1939 to prevent the Roosevelt administration from converting the federal bureaucracy into a gigantic political machine as the big-city bosses of those days had converted city bureaucracies into political machines.

The act forbids federal workers to solicit political campaign contributions from other federal workers, to use their offices for political purposes, to take an active part in the management of a political campaign, and to run for public office.

The whole idea was to protect federal workers from political coercion by their superiors.

Organized labor by and large supported passage of the act, but times have changed. Federal workers were not unionized then; they are now.

The same act that protects them from political coercion by their superiors has come to protect them from political coercion by union bosses.

Naturally, the powers-that-be in the AFL-CIO will have none of that. So they have launched a campaign to disembowel the act, in effect, to repeal it.

They say the act makes federal workers "second-class citizens."

Of course, it does nothing of the kind.

All it does, as the Supreme Court said in 1973 in upholding the constitutionality of the act, is prevent "the rapidly expanding government work force (from being) em-

ployed to build a powerful, invincible and perhaps corrupt political machine."

Nothing in the act prevents a federal workers from making a voluntary contribution to a political candidate and from talking him up among his friends and neighbors.

Nor does the act inhibit unions of federal workers from engaging in political activity.

On the contrary, the unions were on Capitol Hill working overtime when the bill to gut the Hatch Act came before the House. And partly because of this, the House passed the bill by a thumping 288 votes to 119.

We hope the Senate shows better sense. If not, House Minority Leader John Rhodes says he will urge President Ford to veto the bill.

There are 2.5 million workers on the federal payroll. It will be a sad day for them and for the nation if union bosses are given a green light to browbeat them into furthering the bosses' political aims.

Mr. FANNIN. Aside from partisan considerations involved in this legislative debate, Mr. President, there are a number of very important issues which need to be discussed. I would like to advance several arguments in defense of the Hatch Act and against its amendment or repeal.

First of all, the act effectively prevents corruption and coercion of public employees. Without its restrictions, the civil service would be subject to bribery, graft, kickbacks in exchange for jobs, and various forms of political coercion, such as threats to penalize employees who refuse to engage in political activity or attend political rallies.

In addition, the act has insured efficiency and productivity on the part of civil servants. In order to maintain professionalism in the bureaucracy, the civil service must be divorced from partisan politics. Its achievements will be impaired if its employees are permitted to engage in political activity.

Finally, I believe that a strong civil libertarian argument can be made in defense of the Hatch Act. Those who argue that the act unjustly discriminates against civil servants because they are deprived of basic political rights enjoyed by workers in the private sector overlook the fact that Government employees also have a right to be free from political coercion.

Most importantly, the first amendment rights of the people must be preserved. To abolish Hatch Act restrictions is to impose regulations on the free market of ideas. The Government must restrict itself by precluding its employees from partisan political activity. The monopoly of power vested in the Federal Government and access to it by Government employees warrant restraints on the Government and on its workers so that that power is not abused to the people's detriment.

Mr. President, the distinguished attorney, Mr. John R. Bolton, has written an excellent monograph for the American Enterprise Institute for Public Policy Research entitled "The Hatch Act: A Civil Libertarian Defense." I wish to quote from Mr. Bolton:

The Hatch Act is, in effect, a case of the government restraining itself. Non-governmental employees have similar First Amendment rights—the right not to have their freedom to engage in political activity "chilled" by political activists who also administer government programs and regulatory or law-enforcement agencies. As Professor Melkjohn asserted: "The First Amendment does not protect a 'freedom to speak.' It protects the freedom of those activities of thought and communication by which we 'govern.' It is concerned, not with a private right, but with a public power, a governmental responsibility." The most acute government responsibility is that government not allow itself to skew the political process. The political debate can never be "uninhibited, robust, and wide-open" if government employees can coerce their colleagues or intimidate the general public. When viewed as an inhibitor imposed on the government itself, the Hatch Act is as justifiable as other restrictions—judicially or legislatively created—that prevent the government from regulating the "free market" of ideas.

Mr. President, for these reasons, I oppose any repeal or amendment of the Hatch Act. I urge my colleagues to consider the civil libertarian arguments against such repeal or amendment. I shall vote against H.R. 8617, and I urge my colleagues to do the same.

I thank the Chair, and I thank the distinguished Senator from Hawaii.

Mr. FONG. Mr. President, will the Senator yield?

Mr. FANNIN. I am pleased to yield.

Mr. FONG. I thank the distinguished Senator for a very excellent statement.

In relation to the question of second-class citizenship, I wish to state that the Commission on Political Activity of Government Personnel, which was authorized by Congress in 1966 and on which there were 12 very distinguished Members, two from the House of Representatives and two from the Senate, and other very distinguished citizens from the community, reported that they had two purposes in their discussion of this problem, and I shall read what they said:

The overriding problem confronting this commission was to accommodate and reconcile two vitally important but sometimes competing objectives. On the one hand, in our democratic society, it is important to encourage the participation of as many citizens as possible in the political processes which shape our Government; all citizens must have a voice in the affairs of Government. On the other hand, it is equally im-

portant to assure integrity in the administration of governmental affairs and the development of an impartial Civil Service free from partisan politics.

The Commission finally came to the conclusion that integrity in the administration of governmental affairs superseded the first amendment argument and that when they submitted a proposed bill to Congress, this proposed bill prohibited a Federal employee in section (c) as follows:

A Federal employee is prohibited from (1) either directly or indirectly soliciting, receiving, collecting, handling, disbursing, or accounting for assessments, contributions, tickets, or other funds for political purposes, except any activity, participation, contribution, or other service of value. . . .

And then it goes on further and prohibits activities such as becoming a candidate or campaigning for or holding elective office if the office sought is an office of the United States or any office of any State or any other office including local offices, except as local offices is defined; managing a campaign for any candidate seeking elective office if the office sought is an office of the United States, or any office of any State, or any local office, except those permitted by the provisions of section 1623 of this chapter.

This Commission was a very hard-working group that took over a year discerning what the real sentiment in this country was. It held meetings and hearings in six cities, and heard 90 witnesses. This Commission had a survey made by the University of Michigan survey group that asked employees how they felt about the situation, finally arrived at a draft of a proposed bill in which it stated that there should not be any solicitation of funds, and Government employees should not be allowed to campaign for political offices on the Federal level.

So, I commend our colleague from Arizona for his very fine statement, and I call this to his attention.

Mr. FANNIN. I thank the Senator. I express my appreciation and the thanks of the State of Arizona.

We are very cognizant of the excellent services being performed by the distinguished Senator from Hawaii in bringing to the Members of the Senate the facts regarding this particular piece of legislation. He is being protected as a Federal employee. He is dedicated to carrying through what he knows is proper as far as the Federal employee is concerned. It is a disservice to the Federal employee if we do go through with these repeals.

As he has brought out, the largest union that is involved is opposed to the legislation under consideration and is

very much in favor of the position of the distinguished Senator on this legislation.

So I commend him for forthrightly bringing to our attention and to the attention of his colleagues in the Senate exactly what is involved and the true picture that we have to face as far as this legislation is concerned.

Mr. FONG. Mr. President, the distinguished Senator from Arizona has referred, I believe, to the National Federation of Federal Employees which conducted a survey of its approximately 136,000 members. The response was 89 percent wanted the Hatch Act unchanged, and only 1 percent wanted repeal of the act.

There was a survey made by Congressman FISHER, whose constituency is comprised of approximately one-third to 40 percent Federal employees, and he says that he received 20,000 responses, and of the 20,000 responses, 59 percent were against any change of the Hatch Act.

Mr. FANNIN. Those are very impressive statistics and bring out exactly what the distinguished Senator from Hawaii has been stating continuously in the Chamber.

Mr. FONG. Representative GILBERT GUDE, who has the second largest number of Federal employees outside of that of Congressman FISHER and outside of the Washington, D.C. area, states that his mail reflected constituent sentiment similar to those reported by Congressman FISHER in his district.

Then, we have the survey of Representative ELIZABETH HOLTZMAN, Democrat of New York, who said that responses by constituents to her questionnaire were 2 to 1 against weakening the Hatch Act.

We have the analysis of the members of the Federal Executive Alumni Association who were polled—3,000 of them—and only two members of the 3,000 polled wanted the Hatch Act changed.

In the survey made by Michigan University in 1966, only 3 percent of the Federal employees interviewed wanted the Hatch Act repealed. It was a very scientific survey. It started with a statistical sample maintained by the Civil Service Commission of every Federal employee whose social security number ended in 5—a 10th of all Federal employees. From approximately 167,000 entries on magnetic tape, the survey team drew a sample of 1,108 Federal employees who were interviewed at work during July and August 1967. The result was a survey of 980 Federal employees' opinions about the Hatch Act. The survey allows generalization on a statistical basis to 1,641,190 Federal employees.

When asked whether it would make any difference if they were allowed to do more things in politics, 79 percent of those interviewed in the survey said they would not do anything more than they had been doing.

Mr. FANNIN. The Senator has provided some very impressive statistics, pointing out that we are not following the will of the Federal employees when we try to take action that they oppose.

I think it would be wrong for us to go forward with the changes that are in the bill now before the Senate. I commend the Senator from Hawaii for trying to correct the inequities in the bill. I certainly support him in that regard.

Mr. FONG. That is why I agree with the distinguished Senator from Arizona that the bill before the Senate is a great disservice to the Federal employees.

Mr. FANNIN. I thank the Senator.

Mr. FONG. Mr. President, this amendment, No. 1277, is intended to protect the employee from coercion to contribute by union officials.

H.R. 8617 would prohibit a superior from soliciting a political contribution from a subordinate. But it would not prohibit one Federal employee from soliciting another for political funds so long as one employee is not the other employee's supervisor and the solicitation is not done on the job.

Even though a superior-subordinate relationship may not exist in the case of union officials, there are inherent dangers in permitting employees who are union officials to solicit political contributions from other employees.

Take the example of a union shop steward who is not the supervisor of a group of employees. At a union meeting, he approaches members who are Federal workers and tells them, "Come on, fellows, let us kick in."

There is no blatant coercion here, but the fact that he is a union man representing them in negotiations, or doing favors for them, puts the shop steward in a position of influence. It is safe to assume that many if not most of the other Federal employees will listen to him, and contribute, even though it may be against their will to do so.

Because of their key contact positions, shop stewards and other union officials can bring a great deal of pressure to bear upon union members. If it is improper for a superior to use his position to solicit a political contribution, it is equally or even more improper for a union official to do so. It is not difficult to conceive of a union official, representing the collective power of his labor organization, having a greater coercive force on an employee than the employee's superior.

The amendment I propose would pro-

hibit union officials from engaging in solicitation of contributions for partisan political purposes.

When we speak of unions and of those represented by unions, it is important to consider how many people we are talking about in the Federal service. Unions representing Federal employees have grown by leaps and bounds in the past few years. For example, in 1963—the earliest data available—180,000 Federal employees were represented by unions. In November 1974—just 11 years later—the number of Federal employees represented by unions had jumped to 1,142,419, an increase of more than six times as many Federal employees represented by unions in an 11-year period.

Today, nearly one of every six American workers receive their paychecks from governmental agencies, and the number of public employees paying union dues exceeds the entire public payroll of 30 years ago.

With increased numbers comes increased power. This bill, in large measure, is an attempt by some unions to increase that power even more—not only with respect to its own membership, but also with respect to the U.S. Congress.

Nathan T. Wolkomir, president of the largest independent union of career employees—the widely respected National Federation of Federal Employees—said:

There is no question in my mind that this is a further attempt by the AFL-CIO to have terrific political impact on the Hill.

And John McCart, head of the AFL-CIO's public-employee section, agrees, when he said:

I suppose that to the extent we make our people more aware of the political process, you could say that we could acquire more political clout. But what's wrong with that? Our union's whole history is related to politics.

And so, if the AFL-CIO has its way, unions will soon be engaged in exacting political favors from union members in the Federal service.

Our Nation's history, though, shows that politics should have no place in the impartial administration of Federal law—no place in the Civil Service—regardless of the AFL-CIO desire to open the public service to unrestricted political activity.

Employees do not want this or any other change in the Hatch Act. Mr. Wolkomir testified that his union, the NFFE, conducted a poll of its members which showed 89 percent expressing strong support for continuing the act "as is." At its 1974 convention, NFFE unanimously adopted a resolution "that the

NFFE continue to vigorously oppose efforts to weaken the protection provided by the Hatch Act."

Back in 1939, when the Hatch Act was enacted, public employee unions were not the large, powerful organizations they are today. Their rapid growth, in size and strength, has made the Hatch Act more important today. If the Hatch Act was necessary to stop and prevent further coercion of employees by supervisors on a wide scale in the 1930's, it is even more necessary today to protect Federal employees from potential coercion from labor officials. Because the public employee unions are such a powerful political force in our society today, I believe it is prudent and wise to extend the antisolicitation provision of H.R. 8617 to union officials.

Therefore, I urge adoption of my amendment.

Mr. McGEE. Mr. President, I must express the opinion of the majority of the committee that this amendment by the distinguished Senator from Hawaii is unacceptable to the committee, and we are forced to vote "no" on the proposal.

Really, what is at the heart of the Senator's amendment, No. 1277, is anti-unionism. It is just another blow struck at the stewards who serve in the unions, and are elected by union members. It is part of an unraveling process. Let us not disguise it. If we are going to dismantle the unions, then let us have a dismantle-the-unions bill.

One of the breakthroughs modern Government has been dignifying the role of public employees by allowing honorable collective bargaining procedures. It is as elementary as that, and that is what is at stake.

One of the responsibilities of the unions, under law, is to carry out activities in the interests of all and let the individual members cast their votes to decide which way they want to go on a matter. But it ill behoves the Members of this body to start babysitting the unions now, just as we were proposing a while ago to babysit the individual employees.

The same thing applies here, only it has a more subtle implication. It is an attempt to strike a gut blow at a responsible and honorable collective bargaining process that has long been established.

If there are violations they should be prosecuted, and they would be prosecuted under this bill; for the key word here, under the bill that the committee is presenting today, is "voluntary."

There is nothing permitted in the process of collective bargaining that would

do violence to that basic and treasured word. That is the key, Mr. President. And that is the reason it is important that we defeat this basically and intrinsically antilabor proposal. It is nothing more nor less than that.

We have been proud of the fact that, in our country, in contrast to a great many countries, we have been very responsible in the collective-bargaining field, especially among Federal employees at all levels. This has been hailed not only as a great breakthrough in modern history, but as an example for similar groups around the world that there is a wiser and more effective way.

Of course, it is political. I say to my colleague on the other side of the aisle that that is what American Government is all about. It was Thomas Jefferson who made the point best of all when he said that politics must be the lifeblood of the American citizen—the lifeblood.

It is time we stopped trying to demean politics or trying to pretend to avoid something because it is political. It is political sensitivity and political responsibility that makes the difference.

That includes all citizens, not just some citizens. It includes labor, the working man. It includes management. It includes the corporate groups and it includes the consumer groups. If they are not political, then they will hide behind some other pretense and become something less than a constructive or positive force.

The President is political. God help us when he is not, in the sense of being responsive to public opinion and to public interest. That is why we have elections in this country.

It was Charles Evans Hughes who said, on one very eloquent occasion, that unless and until we raise politics to the highest profession in the land, we are going to fail in our mission to preserve a free political society.

That was pretty strong language from a fairly conservative member of the Supreme Court in those days, at a time when he was a distinguished candidate for the highest office in the land. But it is worth our pondering as we seek to tamper, bit by bit, with the broad purposes of this law that is being proposed here, this basic step forward and upward to make the Hatch Act even more meaningful and make those affected by the Hatch Act full citizens in the most responsible way. So the recommendation of the committee is a "no" vote on this measure, Amendment No. 1277.

Mr. TOWER. Mr. President, I have always admired my learned friend from Wyoming, who, I am certain, was a very

good and persuasive teacher in his days in the classroom, and who has an extremely retentive mind that can, at will, summon up the appropriate comment by historic figures to reinforce his arguments. It is with some trepidation that I rise to make a comment.

Since the name of Thomas Jefferson has been invoked, I should like to note that Thomas Jefferson also said that government is best which governs least. I am certain if old Tom were alive today, he would be appalled at the sprawling bureaucracy that we have created, that intrudes on the daily lives of our citizens in a way probably never contemplated by the Founding Fathers.

Thomas Jefferson foresaw that this would be an agrarian society. He said that it was unthinkable that Americans should ever work at the distaff and the loom. I am not sure what a distaff is, but I do know what a loom is. But I think what Tom meant was that Americans should not work in the manufacturing industry.

Although Jefferson's economic forecast for this country might have been inaccurate, and the type of society he envisioned is not the society we have, the fact of the matter is that he was the most articulate of the great American libertarians. He was the original liberal thinker in this country, even though his own thinking had been influenced by a number of the European philosophers.

I am certain that the kind of governmental intrusion in the daily lives of the citizens we have today would be offensive to the libertarian ideas of Thomas Jefferson and his contemporaries.

Mr. President, I do not think we should do anything calculated to encourage placing any more political power in the hands of Government employees, who have a vested interest in the perpetuation of the system. Every time we try to reduce some program or cut funds for it because it has outlived its usefulness or proved to be ineffective, we get a number of Federal employees in, lobbying us to keep the program going, not only to not reduce the funding, but to increase it.

If there is any segment of American society that has inordinate political power, it is not big business, it is not the farmer. It is organized labor, which represents perhaps 20 to 25 percent of the active work force in this country. I think it is time that we revised our archaic labor laws, that we begin to dismantle some of the statutory wall of protection that surrounds organized labor. These laws were put on the statute books back at a time when there was abuse and when the passage of such acts was called for. They no longer fit the situation as it

exists.

I hope the Senate will support the amendment offered by the distinguished Senator from Hawaii, who has labored long and hard in this vineyard, and, I think, knows whereof he speaks.

Mr. McGEE. Mr. President, I accept with great interest the comments of my beloved colleague from Texas, who is guilty of the same crime as the senior Senator from Wyoming. That was pursuing a career as a professor.

He and I appreciate the fact that there was a day when the very worst credentials one could have for public service was to be suspected of having read a book, let alone having written one.

Mr. TOWER. Unfortunately, it may still be true.

Mr. McGEE. I guess the principal weakness I would have to confess to among our colleagues is that, while we were professors, we all had more solutions to the problems of the world than we have today, when we are here where we have to take the consequences for how we vote and what we may decide.

Because of Senator Tower's academic background, I weigh very carefully his comments and am persuaded to pursue them just a little further. I think they tell us a great deal. I think we probably have a genuine common hero in Thomas Jefferson.

I think it makes a difference which Jefferson we quote, because the young Jefferson, the revolutionary who wrote the Declaration of Independence, was quite a different Jefferson from the President of the United States.

The young Jefferson opposed big government, opposed the Federal bureaucracy, and was a very strict constructionist of the Constitution. He was one of those flaming liberals of the revolutionary days. But, upon becoming President, he found that the burdens of the office almost completely reversed his philosophical approach to the problems he was faced with resolving.

Jefferson, who thought that there ought to be a minimum of Federal Government rather than a maximum of it, probably did more than any other President for the first quarter of the country's history—until Jackson, at least—to enhance the role of the Federal Government. He was compelled to do so because of the times.

Congress did not like what he did at the time because they felt he was exceeding the constitutional confines of the executive office. But that is an old story, too. We are up against that often. Jefferson exceeded his early dreams of very austere Government in at least one in-

stance by spending more Federal funds than he had ever dreamed the situation would require. But, in doing so, he acquired an empire greater than any nation had ever acquired in peacetime. It is, of course, the Louisiana Purchase to which I refer.

He violated his own early precepts that he had expressed very eloquently in regard to the powers of the Executive in other ways, also: namely, by preempting decisionmaking in war and in peace in regard to the Barbary pirates. In addition, he developed other concepts that ultimately came down to a loose construction of the Constitution, which had been Hamilton's original position and Jefferson's opposition.

So I am simply saying that we ought to be very careful about what any of us attribute to Thomas Jefferson. I attributed to Thomas Jefferson a quote from one of his essay tracts that, it seems to me, bears not upon either the division of power or the division between liberals and conservatives as to whether the Constitution is being abridged or abused or even obeyed.

It is rather a bit of philosophy in terms of a free society, for his basic philosophy was that everything we do and must do is indeed political. To disguise it otherwise, it seems to me, and seemed in his own words, is to suggest that we are ducking the basic question that was, and is, the lifeblood of our kind of American way, as we loosely call it.

So I would hope that neither of us is torturing Jefferson's intent. I am sure George Washington, Thomas Jefferson, and Abraham Lincoln have received credit for more ideas than any of them ever dreamed possible, and most of them would not have identified with any of those ideas because of the changing times.

But there are some ongoing attributes of all of the giants in our own country's history that are worth repeating. And I consider that one of Jefferson's thoughts worth reminding each other about, if for no other reason because of the shadow that has been cast over our system at this time is that it is necessary that we

build up a confidence in the system of politics. That is not to say partisan politics or crooked politics or narrow politics or enlightened politics; it is to say politics.

The ladies' aid is politics; certainly the school board is politics. Anything that has a responsibility in a social and community way is politics, however else you try to disguise it. The sooner we face squarely I think the sooner we will contribute to raising the level of our con-

cept of politics and our sense of political responsibility.

Nobody that I know of seeks to create a mammoth bureaucracy that preempts the role of the individual. I think the story of the rise of the Federal Government, if we may revert to history again, is pretty much the story of trying to correct the excesses of those who would take advantage of an emerging and rapidly growing new Nation that had unlimited natural resources of great wealth due to the Lord or mother nature, however you want.

It is the story of trying to find a balance, for, I think, it is well that we remind each other that freedom is not free. Freedom requires restraint and judgment and responsibility. I think that is really what is at stake in all of this.

For someone who suggests that the bureaucracy is taking over, I cannot imagine any more burdensome or threatening way for the bureaucracy to become distended in its profile than to imprison Federal employees within the confines of restrictions that take them out of the mainstream of being citizens of the United States. The most responsible way to make sure that the abuses that demean the system and erode it shall not occur or if they do occur that they will occur at great penalty to those who commit it to create the possibility of responsible, relevant citizen participation. That is really what it is all about.

I feel very strongly that our slowly emerging, very responsible collective bargaining system is becoming sophisticated and mature in its new proportions. God knows there are plenty of corrections to be made yet on all sides.

The same thing can be said of the management community as well. Even as we would seek to curb here, as this pending amendment appears to do, the activities of the workingman, we would also seek to make more responsible the activities of the management people, of those who are responsible for the conduct of large business enterprises.

They ought not to be penalized either, and I think under the reforms that have been emerging here in these last months the need for responsible political commitment by large industry groups is now becoming clearer and clearer.

So I think it is a serious mistake to single out the stewards of labor and labor unions as the targets of some sort of exclusion from the mainstream of domestic political life. I mean democratic now in the small "d" sense, in the philosophical sense that Jefferson was referring to. The same thing can be applied to the very large corporate groups as well and I think we are approaching that, as well.

I do not think we will do that—I think

we will move backward—if we try to deny it to the stewards of whatever group. I am talking about the responsibility freely, without duress, without compulsion, without threats, to mobilize the efforts of groups in a responsible political way, and I think that is really at stake in the pending measure. That is why it is so important that we update the items that are currently of concern in the Hatch Act.

Mr. TOWER. Mr. President, I think my colleague from Wyoming was quite correct in pointing out that Jefferson has to be taken in context considering when he said what and, indeed, you could probably find enough Jefferson to support both sides of an argument.

I think Jefferson was fortunate that the War Powers Act was not in existence during his administration or the Tripolitan pirates might have gotten to Washington and burned it down before the British did. Jefferson, however, was pursuing what he perceived to be a constitutional role as the formulator and implementer of foreign policy. I do not believe that that offended his constitutional sensibility. Certainly the Louisiana Purchase did, and he suggested that Congress should formulate and send to the States an amendment to the Constitution that would legalize the act after he had already committed it. I am not that strict a constructionist of the Constitution myself. I think he was perfectly within his rights.

I do think, however, that even though he realized that Government had to exercise a firm hand in society, I do not think he would have taken lightly to the idea of Congress delegating away its power by passing authorizing legislation that creates Government agencies that impact on our daily lives through rules and regulations that sometimes do not accurately reflect congressional intent.

I think the Hatch Act was devised for a good purpose—to prevent exploitation of public employees by politicians—and, on the other hand, performs the function of preventing Government employees from being a pressure group that could perpetuate its own vested interests.

I think both issues are involved here and this is a matter on which I think the Senate should reflect very carefully.

I say to my good friend from Wyoming, I think it is refreshing when we college professors can wrest this away from the lawyers for just a few brief minutes to have a colloquy of this kind.

Mr. FONG. Mr. President, I was very happy to listen to the very erudite and very distinguished remarks of the academicians. I think they have given us a very fine insight into the thinking and the philosophy of President Jefferson.

I am glad the name of President Jef-

person has come forward in the discussion because it was President Jefferson who, understanding what the whole situation was and understanding what politics in government is, issued the first Executive order concerning political activity:

President Thomas Jefferson promulgated the first restrictions on the political activities of the Executive Branch personnel. A directive he issued in 1801 expressed his dissatisfaction with the active participation of Federal personnel in Federal and state elections and warned them not to "attempt to influence the votes of others, nor take any part in the business of electioneering . . ."

This is what Thomas Jefferson issued: the first Executive order dealing with electioneering by Federal employees.

I am glad that his name has been brought up and that his philosophy has been dealt with on the floor of the Senate so that we can get an idea of what this great President has done in issuing that Executive order dealing with electioneering by Federal employees.

My distinguished chairman of the Senate Post Office Committee says that my amendment is anti-union. It is no such thing, Mr. President. My amendment does not prohibit a union man who is not a union official from soliciting his fellow employees for a political contribution.

My amendment only says that if one is a union official that he will be prohibited from soliciting from his peers.

What is so strange about saying that the union official and the union steward cannot solicit from his peers?

The bill which is before us has the same kind of prohibition against the supervisors. We say if one is a supervisor one cannot solicit a subordinate. This bill is antisupervisor and yet it is all right to be antisupervisor and not antiunion-steward.

I cannot see the difference. In fact, it is much worse for the bill to be anti-supervisor, than to be antiunion because the strength of the union is far greater than that of a single supervisor.

I quote from Mr. Bolton, who wrote a study entitled "A Civil Libertarian Defense." In relation to coercion by a supervisor as differentiated from the coercion of a union he says as follows:

Indeed, the difference between coercion of an employee by a supervisor and coercion of an employee by a union—which may include supervisors—(the paradigm of today) is that coercion by a union is far harder to resist. Moreover, it may well be that unions are far more capable of engaging in the systematic solicitation and intimidation of federal employees than a network of supervisors.

Now I ask, who can exert greater influence on an employee, a single supervisor, two or three supervisors, or the collective strength of the union as exemplified and symbolized by that union steward?

When that union steward asks someone to do something, he is asking in the name of the union.

If we bar the supervisors from soliciting a Federal employee, why should we not bar a union official who has the collective pressure, the collective strength, the collective authority of the unions—and when we talk about the unions, we are talking about hundreds of thousands of individuals in that one particular union as differentiated from one supervisor.

I say that the pressure of the union official is far more pervasive, is far stronger has more influence upon the employee than that of the supervisor.

In this bill, which we have presented to the floor of the Senate, we say that the supervisor cannot solicit from his subordinate because he is a supervisor and will be exerting pressure on him. We say in my amendment that the union official may not use the pressure of a union against an employee.

I want to say that this is not anti-union. It is only trying to put the whole thing in perspective; that if we have the pressure, we have the power; we should not use it to solicit political funds. This is what this amendment says.

THE PRESIDING OFFICER (Mr. BROCK). The Senator from Wyoming.

Mr. McGEE. Mr. President, I shall not delay the body excessively here. I want to make one or two comments since we have been enjoying the afternoon reminiscing about the man none of us knew, Thomas Jefferson, and interpreting his role in history, even down to the present time, in some instances.

I would like to remind my colleague that President Jefferson's Executive order against White House personnel participating in trying to influence votes in elections, is not only long since buried in history, but was even buried at that time.

As the Senator will recall, the Jeffersonian era evidenced a government by a very small but very talented group of country gentlemen.

It was a much cozier time. There were not even ramifications of citizenship for all, let alone voting rights for all, stretching over many hundreds of thousands of square miles in many diverse circumstances.

I think it necessary to make sure that we do not lift Mr. Jefferson out of the context—as my colleague from Texas reminds us—of his own time. But I find

it difficult to accept my colleague's comparing the stewards to the supervisors and saying that if there is any difference at all, it is the other way. I guess we have not lived in the same world.

We know the problem under the system, the problem that brought the Hatch Act into being. That is, the fact that supervisors were cracking the whip, and superiors were extracting contributions, and demanding personal conduct that would provide an input for partisan politics.

In my experience, the supervisors in civil service, have not had to stand for election. They have been there because of a fine record of promotion that put them there. Those below them that may have been abused have had no recourse except to file an action before the Civil Service Commission.

A steward, on the other hand, has to stand the test of his peers or be bounced. The same, I suspect, is equally true, if not more viciously so, among the board of directors at the other end of the spectrum, in management. To compare the problem that did flow from the top down and that brought the Hatch Act into being with that of a steward is to distort the record of these times.

Very frankly, Mr. President, I fail to see any conflict of interest of Federal employees in the good management of governments, or in participating in forming public policies or in supporting candi-

dates who are contending for office. For those candidates are not being elected to take care of a Federal employee. They are not being asked to nurse along an interest of an employee except as citizens—no more so than the Chamber of Commerce does.

Representatives of the Chamber of Commerce were just talking to me in the lobby. They needed the appropriation of some funds that would be of assistance to business, to stimulate business activity.

I suppose one could argue they have had a conflict of interest because their membership depends upon strong business roots. But that is what government is about, and that is why citizen lobbies of any type, wherever they are employed, continue to be exceedingly important. That is why we stopped maligning those citizens who are gainfully employed with the Federal Government of the United States.

It is important that we separate the responsibilities of employment from the right to be a full-time citizen of the United States. It is that distinction that we think is being abridged or impinged upon by the Senator's amendment.

So I urge the Members of this body to vote no on amendment No. 1277.

Mr. FONG. Mr. President, this amendment does not malign the Federal employees. It protects the Federal employees from the pressures of the union steward. It protects the employees from being being coerced, subtle or otherwise, into giving a political contribution. If a supervisor is denied that, so should his union official be so denied.

I am ready to vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Hawaii. The yeas and nays have been ordered. The clerk will call the role.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Texas (Mr. BENTSEN), the Senator from Mississippi (Mr. EASTLAND), the Senator from Hawaii (Mr. INOUE), and the Senator from California (Mr. TUNNEY) are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Arizona (Mr. GOLDWATER), the Senator from Wyoming (Mr. HANSEN), the Senator from Idaho (Mr. McCLELLAN), the Senator from Oregon (Mr. PACKWOOD), and the Senator from Vermont (Mr. STAFFORD) are necessarily absent.

The result was announced—yeas 25, nays 66, as follows:

[Rollcall Vote No. 57 Leg.]

YEAS—25

Baker	Domenici	Percy
Bartlett	Fannin	Ribicoff
Bellmon	Fong	Scott, Hugh
Brock	Gara	Scott,
Buckley	Griffin	William L.
Byrd,	Helms	Taft
Harry F., Jr.	Hruska	Thurmond
Curtis	Laxalt	Tower
Dole	McClellan	Young

NAYS—66

Abourezk	Brooke	Case
Allen	Bumpers	Chiles
Bayh	Burdick	Church
Beall	Byrd, Robert C.	Clark
Biden	Cannon	Cranston
Culver	Johnston	Nunn
Durkin	Kennedy	Pastore
Eagleton	Leahy	Pearson
Ford	Long	Pell
Glenn	Magnuson	Proxmire
Gravel	Mansfield	Randolph
Hart, Gary	Mathias	Roth
Hart, Philip A.	McGee	Schweiker
Hartke	McGovern	Sparkman
Haskell	McIntyre	Stennis
Hatfield	Metcalf	Stevens
Hathaway	Mondale	Stevenson
Hollings	Montoya	Stone
Huddleston	Morgan	Symington
Humphrey	Moss	Talmadge
Jackson	Muskie	Welcker
Javits	Nelson	Williams

NOT VOTING—9

Bentsen	Hansen	Packwood
Eastland	Inouye	Stafford
Goldwater	McClure	Tunney

So Mr. FONG's amendment (No. 1277) was rejected.

Mr. MCGEE. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MCGEE. Mr. President, for the benefit of Senators, who may be wondering, we have one more amendment that will take us approximately 10 or 15 minutes. It is an amendment by Senator FONG, and we anticipate that the roll-call vote on that will be the last roll-call tonight. I say that to facilitate those who may have other problems pending. Whenever we come in tomorrow we shall have a series of amendments yet pending. Hopefully we will be able to dispose of them tomorrow.

AMENDMENT NO. 1274

Mr. FONG. Mr. President, I call up my amendment No. 1274.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from Hawaii (Mr. Fong) proposes amendment No. 1274.

Mr. FONG. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 6, beginning on line 22, strike out all through page 7, line 7, and insert in lieu thereof the following:

"§ 7325. Political activities by employees; prohibition

"(a) An employee may not hold, or be a candidate for any elective office, unless such office is—

"(1) a part-time elective office of a State or political subdivision thereof; or

"(2) held by an individual elected in a nonpartisan election.

"(b) An employee may not engage in political activity—

"(1) in which such employee actively participates in any campaign activity on behalf of, or in opposition to, any political party or any candidate for elective office, unless such activity is in connection with—

"(A) any campaign by any candidate for elective office of a State or political subdivision thereof; or

"(B) a nonpartisan election;

"(2) while such employee is on duty;

"(3) in any room or building occupied in the discharge of official duties by an individual employed or holding office in the

Government of the United States, in the government of the District of Columbia, or in any agency or instrumentality of the foregoing; or

"(4) while wearing a uniform or official insignia identifying the office or position of such employee.

On page 7, line 8, strike out "(b)" and insert in lieu thereof "(c) (1)".

On page 7, line 8, strike out "subsection (a)" and insert in lieu thereof "subsections (a) and (b)".

On page 7, line 10, strike out "(1)" and insert in lieu thereof "(A)".

On page 7, line 11, strike out "(2)" and insert in lieu thereof "(B)".

On page 7, line 12, strike out "(A)" and insert in lieu thereof "(1)".

On page 7, line 14, strike out "(B)" and insert in lieu thereof "(ii)".

On page 7, line 16, strike out "(C)" and insert in lieu thereof "(iii)".

On page 7, line 20, strike out "(3)" and insert in lieu thereof "(C)".

On page 7, between lines 23 and 24, insert the following:

"(2) The provisions of subsection (a) and (b) (1) of this section shall not apply to any employee appointed by the President, by and with the advice and consent of the Senate.

"(d) For purposes of this section the term—

"(1) 'nonpartisan election' means any election—

"(A) in which no candidate is to be nominated or elected as a representative of any political party which was identified with any candidate who received any vote in the last preceding election in which presidential electors were selected; or

"(B) on any issue not identified with any political party; and

"(2) 'State' means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or any other territory or possession of the United States."

On page 23, between lines 2 and 3, strike out the item relating to section 7325, and insert in lieu thereof the following:

"7325. Political activities by employees; prohibition."

Mr. FONG. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. FONG. This amendment, No. 1274, is an attempt to strike a balance between maintaining the status quo of the current Hatch Act, on one hand, and on the other hand, allowing Federal employees to run for any political office and participate actively in all partisan campaigns.

H.R. 8617 would do away with almost all restrictions on partisan politics. This I definitely oppose. My amendment is a compromise between the status quo and unrestricted partisan politics. It would do four things:

First, it would permit Federal employees on a partisan basis to run for part-time State and local offices—not full time, but part time. This would cover an estimated 80 percent of the mayors, 94 percent of the city councils,

and virtually all the county commissioners, school boards, and other local boards.

Second, it would permit Federal employees on a nonpartisan basis to run for full time nonpartisan State and local offices.

Third, it would maintain the present law regarding Federal offices; that is, Federal employees would not be permitted to run for Federal offices: the 535 seats in Congress, the Presidency, and the Vice Presidency.

Fourth, my amendment would permit Federal employees to campaign actively for candidates for State and local offices; full as well as part time, but not to campaign for candidates for Federal offices.

Finally, it would prohibit Federal employees from holding office in partisan groups; that is political parties at any level of government.

The Hatch Act, passed 36 years ago, can be improved but not in the drastic manner proposed in H.R. 8617. This is the position taken by the Civil Service Commission and other groups who have carefully studied the subject.

For instance, the Civil Service Commission supports provisions in H.R. 8617 which retain the prohibition against an employee misusing his or her official authority or influence. The Commission also favors those provisions of H.R. 8617 which would improve the procedural aspects of enforcement—such as subpoena power to compel attendance of witnesses which the Commission does not currently have in Federal employee cases.

But the Civil Service Commission and other allied organizations are greatly troubled by the repeal of the current prohibitions against employees taking an active part in partisan political management and partisan political campaigns. In the view of the Commission, the Hatch Act in its present form is designed to protect, and clearly has the effect of protecting, the important values of the franchise and expression of opinion by Federal employees. For, by limiting the employee's involvement in partisan political activities, the Hatch Act serves to assure that employees will not be compelled, or feel themselves compelled, to engage in unwanted partisan political activities in order to curry political favor with their superiors or thereby enhance their prospects for continued employment or advancement.

I share the Commission's opposition to the position taken by those who advocate repeal of the antipolitics restrictions and who assert that the employees will be adequately protected by the anticorruption provisions of H.R. 8617. I agree with the Commission that subtle pres-

sure can be brought to bear upon employees in ways which are beyond the reach of any anticorruption regulation.

Along the same vein, the Organization of Professional Employees of the U.S. Department of Agriculture, composed of 8,000 members, states that—

The most effective control and protection our Federal service has enjoyed under the Hatch Act has been those (anti-politics) restrictions applied to the individual. Laws which place those restrictions and provide penalties only on the supervisory staff will, for many, many reasons, not work. There are too many ways of getting around the prohibitive items and coupled with an individual's desire for recognition, acceptance, advancement and the promotion of personally desired program functions, make such laws almost impossible to enforce. We are therefore opposed to the removal of many political action restrictions on Federal civil servants as now contained in the Hatch Act.

Another organization which takes the same general view in opposition to H.R. 8617 is the National Civil Service League. The League asserts that the bill would "virtually repeal the Hatch Act" and is "apt to lead to a rebirth of the 'spoils system' against which the League has fought for more than 90 years."

The League, too, believes the anticorruption provisions of H.R. 8617 "are inadequate to combat the kind of subtle and indirect intimidation which would be most likely to occur." And to the argument that in the absence of the Hatch Act's restrictions employee organizations will protect their members, the League replies:

This may be a remedy for some workers, though the capacity and will of employee groups to perform this task remains to be seen. Moreover, this provides no solace for mostly unorganized Government executives—precisely the group which was most sorely pressed during the Watergate-related assault on the merit system.

I have here cited the views of three very knowledgeable and dedicated organizations: the Civil Service Commission, the Organization of Professional Employees of the Department of Agriculture, and the National Civil Service League. Each has devoted extensive, concentrated study to the Hatch Act and the current legislation to amend the law. They are adamantly opposed to H.R. 8617 because they are convinced the bill, if it becomes law, would undermine the Civil Service merit system and lead to the return of the old spoils system and all its evils. Their expert opinion should remind us of the dangers of scuttling the Hatch Act through enactment of the bill now before us.

I have set forth other reasons of my own why H.R. 8617 should be defeated. These have been outlined in the minority

views which Senator BELLMON and I filed as members of the Senate Post Office and Civil Service Committee when the committee reported H.R. 8617.

While the organizations I referred to are clearly and definitely opposed to H.R. 8617 in its present form—just as I am—they do not oppose all changes in existing law. At the outset of my remarks on this amendment No. 1410, I described the proposal as a compromise between the status quo and unrestricted partisan politics for Federal employees.

My amendment would expand the present law somewhat by permitting Federal employees to run for part-time partisan elective office in State and local elections. It would also permit Federal employees on a nonpartisan basis to run for full-time State and local offices. It would also permit Federal employees to State and local offices, full as well as part time.

But my amendment would retain and continue certain restrictions. It would not permit Federal employees to run for Federal offices; it would not permit them to campaign for candidates for Federal offices; and it would not permit them to hold office in political parties at any level.

I believe my amendment is a fair method of resolving the desire of any Federal employee for increased participation in political activities while at the same time preserving the most important safeguards for the employees and the civil service merit system.

Mr. President, I yield to the distinguished Senator from Maryland.

Mr. MATHIAS. Mr. President, I thank the Senator from Hawaii. I commend him for the work he has done, not only on this bill but also on legislation over a long period of years in the interests of civil servants and postal workers, work in which he has for a long time been associated with the distinguished chairman of the committee. Both of them have made an admirable record in overseeing the welfare of the men and women who devote their lives to public service in this country.

I am very much interested in the amendment of the Senator from Hawaii, and I ask unanimous consent, if he has no objection, that my name be added as a cosponsor of the amendment.

Mr. FONG. That is fine.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FONG. Mr. President, will the Senator yield?

Mr. MATHIAS. I yield.

Mr. FONG. Mr. President, I ask unanimous consent that I may withdraw my amendment No. 1274 and substitute in its

place amendment No. 1410, which is the revised amendment.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. FONG. Mr. President, I ask unanimous consent that the rollcall vote be transferred to this amendment.

The PRESIDING OFFICER. Without objection, the yeas and nays are transferred to amendment No. 1410.

Mr. MATHIAS. Mr. President, for years I have been an advocate of change in the Hatch Act. I believe that the Hatch Act has been restrictive. It has denied to Federal employees the most rudimentary rights of citizenship, which is participation in government at a local level, participation in government at the level at which their lives are affected critically—municipal and county elections.

The act has been enforced with a rigor which at times is ludicrous. I know of cases in which Federal employees have been denied the opportunity to become delegates to a municipal partisan convention for the nomination of municipal officers. It is a job of about an hour and a half, which has no pay connected with it. It is about the simplest performance of civil duty that I can imagine. Yet, under the rigorous enforcement of the Hatch Act, they have been denied the opportunity to participate in town and city affairs.

Of course, there is a correlative to this, and that is that their communities very often have been denied the creative, imaginative approach to municipal problems, which Federal employees can bring to them.

So, for many years I have been in favor of changing the Hatch Act so that Federal employees could contribute their imagination and their creativity to the problems of their communities through political action. But I also have been aware that the Hatch Act is more than a halter. It is a shield. It was not adopted just to hamper Federal employees who want to participate in electoral activities. The Hatch Act was adopted after widespread public demand, arising from the harassment of public employees for political purposes. They were solicited for money. They were threatened in their job security and in their chances for promotion. They were persuaded to act, if not illegally, certainly improperly, in the performance of their official duties as Government employees. The situation had reached the point of scandal, and the Hatch Act was adopted as a shield to public employees to prevent the continuation of that scandal.

So I do not think we should consider that the Hatch Act is only a restriction

on freedom of political expression. We have to remember that the Hatch Act is also a shield to protect Federal employees.

Much as I have been in favor of change in the Hatch Act—amendment of the Hatch Act—I have come to the conclusion that H.R. 8617, the bill now before the Senate, as it was reported from the committee, is too much of a good thing. It changes the Hatch Act, all right; it really changes it to the point that there is no Hatch Act left.

Federal employees around this town and around this country will rue the day that they lose the shield that is involved in the Hatch Act. They have not been totally immune from harassment even with the Hatch Act. Since I have become a Member of Congress, I have received many, many appeals from Federal employees who have said, "In the agency in which I work, it is expected that I buy a hundred-dollar ticket to a political dinner. It is expected that I subscribe to a political fund."

However, because the Hatch Act existed, I was able to go to the Attorney General of the United States, to go to the Civil Service Commission, and to say: "Look, the law is being broken. These people, who are constituents of mine, who happen to be employees of the Federal Government, are being illegally solicited."

I was able to help protect these people from being forced to contribute to political candidates and political causes that they did not support, because the Hatch Act was a shield. I do not think that this kind of harassment is going to take place in a local election. But I know it does take place in national elections, because the people have come to me and told me about it and complained and asked for help. And the only reason I was able to help them was that the Hatch Act was there as a shield. With this bill, we are going to throw away that shield unless the amendment of the Senator from Hawaii is adopted, an amendment which would permit political activities to take place at the local and State level, but which would protect employees by retaining the restrictions on activities at the Federal level.

I think the integrity of the civil service has to be protected from any hint of corruption. We have had a very recent experience with Watergate. I think that experience has called into question the integrity of Government at the highest levels. I do not think we should do anything today which will in any way further diminish the confidence that the citizens of this country have in their Government. To totally remove the pro-

tections of the Hatch Act at this time, I think, may do just that.

Mr. NELSON. Will the Senator yield for a question?

Mr. MATHIAS. Surely.

Mr. NELSON. I have a list of three amendments here by the Senator from Hawaii. This one specifically addresses itself to the question of running for local or State office and prohibits running for Federal office.

Mr. MATHIAS. This amendment would permit Federal employees the freedom, which I think they should have, to participate in local elections up to and including the statewide election, but not national elections for Congress and for the Presidency.

Mr. NELSON. Will the amendment permit the Federal employee to be a candidate for a State or local election on a partisan ticket?

Mr. MATHIAS. Yes; he could become a candidate. I invite the distinguished author of the amendment to participate.

Mr. FONG. Yes; he can run as a Democrat or a Republican.

Mr. NELSON. For State or local office?

Mr. FONG. Yes.

Mr. NELSON. For partisan office?

Mr. FONG. Yes.

Mr. NELSON. And for full-time office?

Mr. FONG. He cannot run for full-time office in a partisan election—only part time.

Mr. NELSON. I do not know the situation in all States. I assume that in some States, the legislature is considered a full-time office. Would he be prohibited from running for the State legislature under the act—

Mr. FONG. If it is a full-time office; yes.

Mr. NELSON. But if it is a legislative office and it is part time, he can run.

Mr. FONG. Yes.

Mr. MATHIAS. I think the natural examples which occur are city council or board of aldermen, which meet weekly, and that type of thing, which would be permissible; but one which is obviously incompatible with full-time Federal employment would not be permitted under this; is that right?

Mr. FONG. For full-time office, he would not be allowed to run.

Mr. MATHIAS. Mr. President, as an example of what could be done to public confidence in Government, I have a poll conducted by the New York Times concerning the attitude of people toward their Government's responsiveness and trustworthiness. The poll was reported in the New York Times of Monday, February 23:

About 58 percent of most voter groups said that they believe that the Federal Government is unresponsive and 56 percent said

they felt the Government could be trusted only some of the time. Another 5 percent said that they would never trust the Government.

Not surprisingly, the poll showed that cynicism was greater among the young adult and minority groups.

Permitting partisan political activity by Federal employees at all levels of the Government would further feed public mistrust of their Government.

It is significant, I think, that the Senate Select Committee on Presidential Campaign Activities, after completion of its inquiry into the Watergate affair, did not recommend that the Hatch Act be liberalized. In fact, the committee, in its final report, recommended that the Hatch Act be extended to cover additional employees. It is my opinion that the bill before us, as reported by the committee, would further erode confidence in the Government. I think it would allow unlimited campaigning for a candidate by Federal and postal workers without requiring them to take a leave of absence. Only those running for elective office would be required to take leave without pay 90 days prior to the election date.

I think we have to consider what this would do to the workings of the Government. Lacking any clear directive or prohibition to limit political activities to nonworking, off-duty hours, Federal employees could engage in telephone campaign work, soliciting funds and votes from their coworkers and from others. The processes of Government would surely be slowed by the problems of separating off-duty from on-duty time. I think the public's view of Federal redtape and delay in decisionmaking could become more cynical than it already is.

I represent a great many Federal workers. I do not think they compartmentalize their lives any more than anybody else does. I think we would ask too much of them to ask them to perform as neutral nonpartisan civil servants by day and as political operatives at night.

Mr. President, I make a point of order that a quorum is not present.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FONG. Mr. President, I ask unanimous consent that Senator BUCKLEY be made a cosponsor of this amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MATHIAS. Mr. President. I think

it is worth reviewing the comments of the Supreme Court in June of 1973 in defining public trust. The Court said at that time:

It seems fundamental in the first place that employees in the Executive branch of the Government, or those working for any of its agencies should administer the law in accordance with the will of the Congress, rather than in accordance with their own or the will of a political party. They are expected to enforce the law and execute the programs of the Government without bias or favoritism for or against any political party or group or the members thereof. A major thesis of the Hatch Act is that to serve this great end of Government—the impartial execution of the laws—it is essential that federal employees not, for example, take formal positions in political parties, nor under-

take to play substantial roles in partisan political tickets. Forbidding activities like these will reduce the hazards to fair and effective government.

That quote, of course, is from the Supreme Court case of the Civil Service Commission against the National Association of Letter Carriers.

I do not go as far as the Court did in that decision. I think it is all right to let a Federal employee take a partisan position with respect to a State or local election. The amendment sponsored by the Senator from Hawaii would safeguard against any compromise of the Federal Civil Service by restricting partisan political activity to State and local elections.

Two major exemptions in the present Hatch Act now on the books provide for partisan campaigning. All Federal employees are permitted to engage in nonpartisan political activity, including being a candidate in a nonpartisan election, and a nonpartisan election is one in which none of the candidates represents a political party whose candidate for Presidential electors received votes in the last Presidential election.

The second exemption covers employees residing in areas where a majority of voters are Federal employees. The Civil Service Commission is empowered to except such employees so that they may take part in municipal or other local partisan political matters. However, under Civil Service Commission regulations political participation by these employees is limited to activity on behalf of an independent candidate or to being an independent candidate, and this exemption extends to employees residing in Maryland or Virginia, in the immediate vicinity of the District.

Now, the amendment before us, the amendment of the Senator from Hawaii, makes a material liberalization of the

Hatch Act, and Congress, if it adopts the Fong amendment, would have an opportunity to observe how the liberalization of the act is working, whether it is promoting a higher level of citizenship among Federal employees in participation in local and State elections.

They can also observe whether lowering the shield of the Hatch Act is exposing the Federal employees to a greater degree of risk of harassment, of solicitation for funds, of threat to promotion, or to job tenure—all of those things the Hatch Act was originally enacted to prevent.

Now, the bill before us, of course, opens the door to political activities of all kinds except the few which are specifically prohibited.

The original bill in the other body, H.R. 3000, is more concise by specifically listing the kind of political activity that would be permissible.

So really under this bill "anything goes"; "anything goes" unless it is specifically prohibited. I think we want to raise a question as to whether we want to say "anything goes" when we are talking about political activities of Federal employees in relation to Presidential elections, to congressional elections, to elections on the national scale which deal directly with the agencies in which these employees work.

Now, that is a question to ponder. I do not think we can overlook the question of the coercion of Government employees in the light of recent experience with abuse of power. For a long time in America we said it could not happen here but, unfortunately, we have learned that a great many things can happen here, and Government employees can be coerced and, unhappily, we have experience in our own past to know that it can happen here. That is why the Hatch Act was adopted.

I think by limiting partisan and political activity by Government workers the Government is, in effect, restraining itself and really in first amendment terms protecting voluntary uncoerced political activity by individuals.

The American Enterprise Institute for Public Policy Research has pointed out:

There is no *a priori* reason why one employee's First Amendment right to engage in partisan political activity should be given preference (as repeal of the Hatch Act limitations would do) over his colleague's equally important First Amendment right not to be forced to engage in partisan activity. Of course, there is no *a priori* reason why the contrary of this proposition is not also valid.

So I think we have to ask what protection would be provided a Federal em-

ployee who does not wish to participate in political activity but is requested or, perhaps, subtly coerced to do so by co-workers and by, most important of all, his superiors.

I think persons engaged in business with their government must feel free to speak their minds regardless of political persuasion and to associate with Federal representatives without fear that their opinions would be adversely received by those Federal employees.

Because one of the main purposes of the first amendment was to protect the free discussion of governmental affairs, of political affairs, of politics, as the Court held in *Mills against Alabama*, the political restrictions on Federal workers are restrictions on governmental interference with speech and associational freedoms.

Moreover, political decisionmaking by Federal employees serves, can serve, their own political motives at the expense of the citizens-at-large whom they have chosen to serve by accepting Federal employment.

As was noted in the previously cited American Enterprise Institute report:

A politically active bureaucracy raises grave dangers that at least in part, government by the people risks being replaced by government by the government. . . .

Because bureaucrats, particularly higher level ones, possess established channels of communication to the policy-making organs of the government, they have opportunities to affect decision making to an extent far beyond the ability of the average citizen. If partisan activity were also permitted to them, their influence, as a consequence of the access to federal power provided by their jobs, would be even more disproportionate to that of their fellow citizens.

So I think, in light of the American experience prior to the year 1939 with the spoils systems of the Federal service—with the experience which led to public demand, which led to adoption of the Hatch Act—the Hatch Act was not just hatched. We had the Hatch Act because people wanted the Hatch Act, they demanded the Hatch Act. They felt the country needed it; they felt the Federal employees needed it; they needed that protection.

With that experience in mind I think it behooves us to proceed cautiously in the amendment of the act. Once our Federal service becomes tainted with charges of politics and partiality it is difficult to restore confidence.

That confidence is the confidence of the average citizen in his government. That confidence is also the confidence of the employee who has decided patrioti-

cally to devote his or her life to government service, but who wants to do it without being harassed by some politician who says, "You have to buy a ticket to a dinner in order to get promoted, or you have to undertake political activity and show where your heart is if you want to keep your job."

And those were the conditions that existed in this country before 1939. And, Mr. President, those are the conditions that might return to this country if we totally abolish the protection, the shield of the Hatch Act, which not only covers the integrity of the Government for the sake and welfare of all of the people, but which is a shield in particular for the employees.

Mr. President, I very sincerely hope the Senate will adopt the amendment of the Senator from Hawaii and then we will have a relaxation of the Hatch Act which will give us a test to show how Federal employees can make a positive contribution by participation through local and State elections.

I believe that will be a positive experience in American politics.

Mr. FONG. Mr. President, I want to thank the distinguished Senator from Maryland for a very enlightened speech. It was an excellent statement.

I yield the floor to my other colleague from Maryland.

Mr. BEALL. I thank the distinguished Senator from Hawaii, and the ranking minority member of the committee, for yielding to me on this subject.

Mr. President, I rise in support of the amendment offered by Senator FONG and in support of the position just expressed so eloquently by my senior colleague from Maryland (Mr. MATTHIAS).

Mr. President, as one who represents a large number of Federal employees who reside in the State of Maryland, this legislation is of great importance to me. The volume of mail I have received from those in the civil service and from members of the general public has been quite heavy on this subject, as one can imagine. This mail, however, does not support the contention that our civil servants desire a change in the present Hatch Act provisions. To the contrary, the majority of the letters I have received indicate a fear by some Federal employees and citizens of pressures that might be applied to them in case the Hatch Act rules were relaxed, and a desire on their part to maintain an apolitical civil service.

I have repeatedly expressed my concern over the growing bureaucracy and costs of the Federal Government, and the need to improve the delivery of governmental services to the public. This

delivery can best be accomplished by an impartial civil service, and, in fact, I feel that the politicization of those involved with programs on the Federal level would be disastrous. The public would have an added concern about the effects of their political opinions and activities when facing the Federal bureaucracies, and any improvements in the relations between the Federal level and the recipient groups in recent years might, indeed, be undermined.

Mr. President, my objections to the legislation before us now are based on two major factors: A desire to maintain the impartiality of the civil service; and a desire to heighten the public's perception of this impartiality. In recent years, the Federal Government has apparently been losing the confidence of the American public, a confidence that we are all trying to regain. I do not feel that the Nation would approve of the politicization of the civil service, nor do I feel that it is helpful in insuring the fairest implementation of governmental policy to have people identified with partisan politics also charged with the responsibility of the impartial execution of public duties.

Proponents of a change in the Hatch Act maintain that one can separate his or her political views from his or her work. I do not feel that people are able to compartmentalize their lives in this fashion. Although a civil servant may make an honest attempt to continue the impartiality of his or her work, I feel that the pressures to combine political activity with this work will be too great. The debate on the House side on this issue focused on the problems that members of the law enforcement and intelligence communities might have in this regard, and testimony submitted before Congress by other regulatory agencies supports this concern. The subtleness of any coercion either to participate, contribute, or use one's position for political reasons is too difficult to prove, and/or to prevent, other than by the absolute prohibition of any political activity. The experiences of minority groups in employment and the difficulty in enforcing current nondiscrimination laws are cases in point. The frustration that these groups feel would extend to Federal employees, no matter what mechanisms are established to hear and decide cases of coercion.

Additional arguments are made that constitutional rights are being infringed upon with the restriction of political activities of one segment of our society. This argument has been before the Supreme Court of the United States on three different occasions and all three

times the Justices have supported the constitutionality of the Hatch Act, declaring that first amendment restrictions can be made because of the dire need to have an impartial civil service. Thus, we are protecting the greater private rights of our Nation's citizens over the public powers associated with the Government and its employees. When one Federal employee applies political pressure to another employee, he is in effect applying power given to him by his position in the Government. This power comes from the general public, to allow the Government to perform functions on behalf of its citizens, and must not be misused.

At the same time, Mr. President, I feel that a Federal employee could provide a valuable service if allowed to participate in State or local political activities. This would encompass a vast majority of the mayors, 94 percent of the city councils, and virtually all of the county commissioners and school boards in the Nation. The amendment before us would allow the Federal employee more freedom of participation on the appropriate levels, and still permit him to maintain his impartiality on his job performance.

Mr. President, I think the amendment offered by the distinguished senior Senator from Hawaii strikes at the heart of the matter. It guarantees that we will carry on the Nation's public services in the tradition established under the provisions of the existing Hatch Act, so that we can have impartiality in the delivering of governmental services. It also broadens the act so that Federal officials can provide the kind of service for which they are very well qualified in carrying out their citizenship responsibilities at the local and State level.

Therefore, Mr. President, I urge adoption of the amendment offered by the Senator from Hawaii.

I thank the Senator for yielding.

Mr. FONG. Mr. President, I thank the distinguished Senator from Maryland for his very fine statement.

Mr. President, I ask unanimous consent that the Senator from Kansas (Mr. PEARSON) be added as a cosponsor to this amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to the amendment.

Mr. FONG. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BEALL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BEALL. Mr. President, I ask unanimous consent that I might be made a cosponsor of the Fong amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BEALL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HATFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. CULVER). Without objection, it is so ordered.

Mr. MCGEE. Mr. President, this is the so-called Fisher amendment, defeated when it was considered in the committee, as it was in the House of Representatives. The purpose of the amendment is to restrict Federal employees from engaging in political activity, including becoming a candidate, involving an office of the Federal Government. It also restricts their candidacy to elections to fill part-time State or local office or nonpartisan office.

The amendment would vitiate the bill. It would say, yes, Federal employees can exercise their rights as citizens, so long as they restrict that exercise to State and local affairs. As a practical matter, where there is an election involving candidates for Federal, State, and local offices, it would be a different matter. A Federal employee could not, for instance, hand out a sample ballot pertaining to such an election. It would fragment the regulation of the entire law, raising doubts in every interested employee's mind. Are we to say that Federal employees can enjoy the full rights of participation as citizens of the several States, but not the United States? I think not.

As for becoming a candidate for, say, a seat in Congress, that would be barred by this amendment. The bill as it stands makes that surpassingly unlikely because of the lengthy leave-without-pay requirement, which the committee considers proper.

Mr. FONG. Mr. President, we are ready to vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Hawaii. The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Massachusetts (Mr. EASTLAND), the Senator from Hawaii (Mr. INOUE), and the Senator from California (Mr. TUNNEY) are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Arizona (Mr. GOLDWATER), the Senator from Idaho (Mr. MCCLURE), the Senator from Oregon (Mr. PACKWOOD), the Senator from Delaware (Mr. ROTH), and the Senator from Vermont (Mr. STAFFORD) are necessarily absent.

The result was announced—yeas 31, nays 60, as follows:

[Rollcall Vote No. 58 Leg.]

YEAS—31

Baker	Domenici	McClellan
Bartlett	Fannin	Pearson
Beall	Fong	Pell
Bellmon	Garn	Percy
Biden	Griffin	Ribicoff
Brock	Hansen	Scott, Hugh
Buckley	Hatfield	Taft
Byrd,	Helms	Thurmond
Harry F., Jr.	Hruska	Tower
Curtis	Laxalt	Young
Dole	Mathias	

NAYS—60

Abourezk	Hartke	Moss
Allen	Haskell	Muskie
Bentsen	Hathaway	Nelson
Brooke	Hollings	Nunn
Bumpers	Huddleston	Pastore
Burdick	Humphrey	Proxmire
Byrd, Robert C.	Jackson	Randolph
Cannon	Javits	Schweiker
Case	Johnston	Scott,
Chiles	Kennedy	William L.
Church	Leahy	Sparkman
Clark	Long	Stennis
Cranston	Magnuson	Stevens
Culver	Mansfield	Stevenson
Durkin	McGee	Stone
Eagleton	McGovern	Symington
Ford	McIntyre	Talmadge
Glenn	Metcalfe	Welcker
Gravel	Mondale	Williams
Hart, Gary	Montoya	
Hart, Philip A.	Morgan	

NOT VOTING—9

Bayh	Inouye	Roth
Eastland	McClure	Stafford
Goldwater	Packwood	Tunney

So Mr. Fong's amendment (No. 1410) was rejected.

Mr. McGEE. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1354

Mr. McGEE. Mr. President, we have had consultation on this. By agreement, I call up Senator HATHAWAY's amendment No. 1354. We are prepared to accept the amendment, and there is no opposition to it.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Maine (Mr. HATHAWAY) proposes an amendment No. 1354.

The amendment is as follows:

On page 8, strike out lines 6 through 23 and insert in lieu thereof the following:

"(2) (A) Any employee who is a candidate for elective office shall be placed on leave without pay effective beginning on the day following the date on which the employee became a candidate for elective office. Such leave shall terminate on the day following the final election or the day following the date on which the employee is no longer a candidate for elective office, whichever first occurs, unless the employee is otherwise on leave.

"(B) Any employee who is elected to elective office in the final election shall be removed from employment effective upon termination of any leave due such employee.

"(C) The Civil Service Commission shall, upon application, exempt from the application of this paragraph any employee who is a candidate for or elected to any part-time elective office."

On page 20, line 25, strike out "60" and insert in lieu thereof "120".

Mr. HATHAWAY. Mr. President, I am in favor of removing some of the restrictions contained in the Hatch Act which limit the ability of our Federal employees and postal workers to participate more fully in public and political life. At the same time however, we have to be very careful that civil service does not revert to the spoils system. Our primary consideration ought to be to preserve the merit system and to allow political participation only to the extent that such participation does not conflict with the merit system. It is of critical importance that our public servants continue to serve all of the people, regardless of their political affiliation or willingness to support particular candidates.

In this regard the Hatch Act has played a valuable role in removing civil service from political patronage. As has been pointed out by other speakers, the Hatch Act was enacted in 1939 in response to incidents of political corruption in the awarding of jobs in the Works Progress Administration. Strong measures were seen to be necessary at that time. Congress then decided to prohibit all Federal workers from running any partisan political office, from working for any political candidates, and from making or receiving political contributions.

Since 1939 some of these prohibitions have been modified. It is now possible for Federal employees to participate in political activities if they reside in localities where a majority of voters are employed by the Federal Government. It is now time, I believe, to remove some other restrictions and to allow Federal employees

to participate in political life to the extent that such participation does not rise to the level of a conflict of interest with their overriding duty to be fair to all the citizens they serve.

The legislation before us today goes a long way toward effectuating this balance. It allows Federal employees to engage in political activities during their off hours away from the work premises. It allows employees to give and solicit Federal campaign contributions, but prohibits superiors from soliciting contributions from their subordinates and likewise prohibits subordinates from making contributions to their superiors. Any violations of this structure shall be considered by the Board on Political Activities of Federal Employees, to be created under this legislation. This Board is authorized to punish violators with removal from civil service, suspension without pay, or such other penalties as it deems appropriate. This legislation also makes it a Federal crime to obtain through threats of physical violence, or economic sanctions, any political contributions from Federal employees. Those found guilty of this crime are to be imprisoned not less than 2 nor more than 3 years or fined up to \$5,000, or both. I believe this structure, with enforcement of basic violations by the Board and ultimately backed by strong criminal penalties, will allow Federal employees to enjoy their political rights and at the same time be free from any political coercion in the pursuit of their official duties.

There is, however, one aspect of this legislation which disturbs me a great deal and which I believe requires amendment lest its positive aspects be subverted. This aspect is the procedure governing the treatment of Federal employees who are candidates for full-time political office. Under the House passed bill, an employee who is a candidate for any political office is to be granted leave without pay at his request. Furthermore such an employee who is a candidate for full-time political office is required to go on leave without pay 90 days before any election, whether primary, general, or special. This mandatory leave is to terminate on the day following the day of such election, or when the employee determines he is no longer a candidate, whichever occurs first, unless the employee is otherwise on leave.

The House bill exempts candidates for part-time elective office. The Civil Service Commission is to determine which elective offices ought to be considered full time and which part time for purposes of this mandatory leave requirement.

I believe that Federal employees who wish to run for part-time political office ought to be permitted to do so. They

ought to be allowed to devote their off hours to such civic duties as serving on local school boards, city and town councils, and other part-time offices. I believe the House bill takes the right approach in exempting such activities from the mandatory leave requirement. The decision of what constitutes part-time office and what ought to be considered full-time office is appropriately left to the Civil Service Commission. In making this determination I would hope the Commission would consider the degree which such offices would impinge upon the employee's primary duty to serve all of the public impartially during working hours.

I am however, unsatisfied with the approach which the legislation as currently drafted takes toward Federal employees and postal workers who wish to be candidates for full-time political office. My amendment is designed to modify this approach to insure that it is not possible for an individual to continue to be on the Federal payroll in the civil service at the same time he is a candidate for full-time political office.

The House passed bill in requiring candidates for full-time office to go on leave without pay 90 days before an election is certainly a step in the right direction. But many, if not most candidate for full-time offices begin their active campaigns long before the election is 3 months away.

Furthermore, in structuring the mandatory leave mechanism to trigger 90 days prior to any election, whether primary general or special, and terminating such leave on the day following such election, this legislation as currently drafted would allow a Federal employee who is a candidate for full-time office to go on and off leave before and after each such election.

To illustrate the manner in which this mechanism would work, I would like to pose the example of a Federal employee in the State of Maine who decides to run for full-time political office. He or she might begin the campaign in earnest in January or February. Since the primary election is on June 8 this year this candidate would not be required to go on leave without pay until March 10 under the 90-day rule. On June 9, the day after the primary election, regardless of whether that individual won or lost the primary, he could go back to work for the Federal Government. The winner of a primary election for a full-time office, the nominee of his party, could go back on the job from June 9 until July 5 at which

time mandatory leave would again be triggered under the 90-day rule, since the general election would occur on November 2. The legislation as currently drafted would similarly allow the victor in the general election to return to work in a Federal job on November 3. The individual so treated would be completely within the law to collect his salary and perform his job until the time arrived to be sworn into his full-time office. In the cases of U.S. Senators and Congressmen this would occur on January 3, 1977.

This scenario is indeed disturbing, and it is difficult to believe that Congress would knowingly allow this to occur. Human nature would indicate that such an individual would not be totally devoted to his job as election drew nearer, or in the case of a successful candidate, as his swearing in drew close.

Another, more serious, problem from this set of facts would be the manner in which the general public would react to this individual as he becomes more involved in the electoral process. Those whose political philosophy differed from that of the employee-candidate might find it increasingly difficult as the election drew near to deal with this individual on an objective basis. Further those who favored his candidacy might be reluctant to press for services they had grown to expect. This dual status of candidate and employee poses its most serious problems in those situations where the employee-candidate would have substantial dealings with the private sector, if for example, he were employed by one of the various regulatory agencies.

The simplest way to avoid all of these problems would be to eliminate the 90-day rule and instead to trigger the mandatory leave without pay for candidates for full-time office as soon as the individual attained candidate status. As defined in this legislation, a candidate is any individual who has taken action to qualify for nomination for election or election, or has received political contributions or made expenditures, directly or indirectly, with a view to bringing about such individuals nomination or election.

My amendment would make this change in the proposed legislation and would thereby avoid the scenario for potential conflicts of interest which I have just described. In removing the 90-day rule it would no longer be possible for candidates to go on and off leave as the days of the calendar ticked off. Rather, leave without pay would be mandatory on the day following the day on which candidate status is obtained and would continue so long as that individual maintained such status. If he withdrew or lost an election he could go back to work.

But as long as he remained a candidate he would remain off the job and off the Federal payroll. Further, if he were victorious in the final election he would, under my amendment, be removed from employment.

In my amendment as in the reported version of this bill it is permissible for an employee-candidate to utilize such leave as might otherwise be coming to him, without regard to the mandatory leave, but such leave will only be granted subsequent to the running of the mandatory leave in order to insure that the candidate-employee may not enjoy sick leave or vacation leave with pay at the same time he is required under these provisions to be on leave without pay.

Finally, I propose to amend the provisions of his legislation relating to educational programs to be conducted by the Civil Service Commission to inform Federal employees of their rights and duties under this legislation. The reported version of this bill requires the Commission to provide employees with this information not later than 60 days before the earliest primary or general election in the State involved. I propose to amend

this to require this information be supplied 120 days before this time. Those employees who are inclined to become involved in the political process ought to be informed of their rights and duties on a timely basis in order to plan their activities accordingly. It would indeed be unfortunate if an employee were to be found guilty of violating any of the provisions of this legislation solely due to lack of knowledge of its provisions.

Mr. McGEE. Mr. President, the purpose of this amendment is to extend the clause in the pending measure for which a potential candidate for office would be required to do more than take a 90-day leave of absence. He would take a leave of absence the moment his candidacy became official, or the 90 days, which ever came first.

Both sides agree that this is without objection.

I move its adoption.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Maine.

The amendment was agreed to.

AMENDMENT NO. 1409

Mr. FONG. Mr. President, I call up my amendment No. 1409 and ask that it be laid before the Senate.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Hawaii (Mr. Fong) proposes an amendment No. 1409.

Mr. FONG. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 7, line 8, strike out "or".

On page 7, line 8, strike out the period and insert in lieu thereof a comma and "or".

On page 7, between lines 8 and 9, insert the following:

"(4) (A) at any time, if such employee, in the discharge of his official duties, has such contact with the public as to become a public figure identified with the formulation, prescription, implementation, or interpretation of any policy of the Government, or is an employee of the Department of Justice, the Internal Revenue Service, the Central Intelligence Agency, the National Security Agency, or the Defense Intelligence Agency, except that such employee may voluntarily make a political contribution of money to a candidate for elective office in accordance with the provisions of section 7324 of this title.

"(B) The provisions of subparagraph (A) of this paragraph do not apply to any officer or employee appointed by the President, by and with the advice and consent of the Senate."

Mr. FONG. I shall explain the amendment.

First, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistance legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

TIME-LIMITATION AGREEMENT—AMENDMENT NO. 1409

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a time limitation on the pending amendment by Mr. Fong, with the understanding that the time will not start running tonight, of 1 hour to be equally divided between Mr. Fong and Mr. McGEE.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER TO CALL UP AMENDMENT NO. 1434 AND TIME-LIMITATION AGREEMENT THEREON

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that upon the disposition of the amendment by Mr. Fong tomorrow the amendment by Mr. NELSON, No. 1434, be called up and that there be a time limitation on that amendment of 1 hour to be equally divided in accordance with the usual form.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS SUBMITTED ON H.R. 8617

Mr. FANNIN. Mr. President, it is amazing how much our country has changed and how little our Government has changed during the past four decades.

This was demonstrated graphically to me recently when a constituent sent to me a copy of a Social Security Board pamphlet which was printed some 40 years ago at the outset of the social security program.

This pamphlet carries on about how much the benefits will be and how little the taxes will be. At one point the pamphlet says that the maximum tax will be 3 cents per dollar up to \$3,000 income—a total of \$90 per year. Then, the pamphlet says:

That is the most you will ever pay.

It also states:

What you get from the Government plan will always be more than you have paid in taxes and usually more than you can get for yourself by putting away the same amount of money each week in some other way.

Mr. President, perhaps this pamphlet should be required reading for every politician. Certainly it should be required reading for every citizen so that the people will be acutely aware of the great gulf between what Government promises and what it can deliver when we talk about social programs. One of the great tragedies is the fact that too many Americans over the years have been misled by ambitious politicians to believe that social security is a program which provides for a comfortable retirement.

Mr. President, I ask unanimous consent that this brief pamphlet be printed in the RECORD.

There being no objection, the pamphlet was ordered to be printed in the RECORD, as follows:

SECURITY IN YOUR OLD AGE

(Social Security Board, Washington, D.C.)

To employees of industrial and business establishments, factories, shops, mines, mills, stores, offices, and other places of business

Beginning November 24, 1936, the United States Government will set up a Social Security account for you, if you are eligible. To understand your obligations, rights, and

benefits you should read the following general explanation.

There is now a law in this country which will give about 26 million working people something to live on when they are old and have stopped working. This law, which gives other benefits, too, was passed last year by Congress and is called, the Social Security Act.

Under this law the United States Government will send checks every month to retired workers, both men and women, after they have passed their 65th birthday and have met a few simple requirements of the law.

WHAT THIS MEANS TO YOU

This means that if you work in some factory, shop, mine, mill, store, office, or almost any other kind of business or industry, you will be earning benefits that will come to you later on. From the time you are 65 years old, or more, and stop working, you will get a Government check every month of your life, if you have worked some time (one day or more) in each of any 5 years after 1936, and have earned during that time a total of \$2,000 or more.

The checks will come to you as a right. You will get them regardless of the amount of property or income you may have. They are what the law calls "Old-Age Benefits" under the Social Security Act. If you prefer to keep on working after you are 65, the monthly checks from the Government will begin coming to you whenever you decide to retire.

THE AMOUNT OF YOUR CHECKS

How much you will get when you are 65 years old will depend entirely on how much you earn in wages from your industrial or business employment between January 1, 1937, and your 65th birthday. A man or woman who gets good wages and has a steady job most of his or her life can get as much as \$85 a month for life after age 65. The least you can get in monthly benefits, if you come under the law at all, is \$10 a month.

If you are now young

Suppose you are making \$25 a week and are young enough now to go on working for 40 years. If you make an average of \$25 a week for 52 weeks in each year, your check when you are 65 years old will be \$53 a month for the rest of your life. If you make \$50 a week, you will get \$74.50 a month for the rest of your life after age 65.

If you are now middle-aged

But suppose you are about 55 years old now and have 10 years to work before you are 65. Suppose you make only \$15 a week on the average. When you stop work at age 65 you will get a check for \$19 each month for the rest of your life. If you make \$25 a week for 11 years, you will get a little over \$23 a month from the Government as long as you live after your 65th birthday.

If you should die before age 65

If you should die before you begin to get your monthly checks, your family will get a payment in cash, amounting to 3½ cents on every dollar of wages you have earned after 1936. If, for example, you should die at age 64, and if you had earned \$25 a week for 10

years before that time, your family would receive \$455. On the other hand, if you have not worked enough to get the regular monthly checks by the time you are 65, you will get a lump sum, or if you should die your family or estate would get a lump sum.

The amount of this, too, will be 3½ cents on every dollar of wages you earn after 1936.

TAXES

The same law that provides these old-age benefits for you and other workers, sets up certain new taxes to be paid to the United States Government. These taxes are collected by the Bureau of Internal Revenue of the U.S. Treasury Department, and inquiries concerning them should be addressed to that bureau. The law also creates an "Old-Age Reserve Account" in the United States Treasury, and Congress is authorized to put into this reserve account each year enough money to provide for the monthly payments you and other workers are to receive when you are 65.

Your part of the tax

The taxes called for in this law will be paid both by your employer and by you. For the next 3 years you will pay maybe 15 cents a week, maybe 25 cents a week, maybe 30 cents or more, according to what you earn. That is to say, during the next 3 years, beginning January 1, 1937, you will pay 1 cent for every dollar you earn, and at the same time your employer will pay 1 cent for every dollar you earn, up to \$3,000 a year. Twenty-six million other workers and their employers will be paying at the same time.

After the first 3 years—that is to say, beginning in 1940—you will pay, and your employer will pay, 1½ cents for each dollar you earn, up to \$3,000 a year. This will be the tax for 3 years, and then, beginning in 1943, you will pay 2 cents, and so will your employer, for every dollar you earn for the next 3 years. After that, you and your employer will each pay half a cent more for 3 years, and finally, beginning in 1949, twelve years from now, you and your employer will each pay 3 cents on each dollar you earn, up to \$3,000 a year. That is the most you will ever pay.

Your employer's part of the tax

The Government will collect both of these taxes from your employer. Your part of the tax will be taken out of your pay. The Government will collect from your employer an equal amount out of his own funds.

This will go on just the same if you go to work for another employer, so long as you work in a factory, shop, mine, mill, office, store, or other such place of business. (Wages earned in employment as farm workers, domestic workers in private homes, Government workers, and on a few other kinds of jobs are not subject to this tax.)

Old-Age Reserve account

Meanwhile, the Old-Age Reserve fund in the United States Treasury is drawing interest, and the Government guarantees it will never earn less than 3 percent. This means that 3 cents will be added to every dollar in the fund each year.

Maybe your employer has an old-age pension plan for his employees. If so, the Gov-

ernment's old-age benefit plan will not have to interfere with that. The employer can fit his plan into the Government plan.

What you get from the Government plan will always be more than you have paid in taxes and usually more than you can get for yourself by putting away the same amount of money each week in some other way.

NOTE.—"Wages" and "employment" wherever used in the foregoing mean wages and employment as defined in the Social Security Act.

Mr. HRUSKA. Mr. President, I rise to express strong opposition to H.R. 8617 in the form recommended by the Committee on Post Office and Civil Service and to associate myself with the well-stated minority views of the distinguished senior Senators from Hawaii and Oklahoma.

As reported, H.R. 8617 would not reform the Hatch Act. It would largely repeal it.

I concede that some clarification of the Hatch Act's current provisions may be in order. These are clearly within the capacity of the Civil Service Commission and, to the extent actually necessary, the legislative powers of the Congress and the judicial powers of the Federal courts. It is not my impression, however, that legions of Federal employees are anguishing over what is permissible political activity under current law. On the other hand, there are some employees at any time who do have legitimate questions about proper political behavior under the law. In fact, I know of few Federal laws and regulations attempting to regulate political behavior which do not raise continuing questions and require rather frequent clarification. We need only look to our recent experience with the Federal campaign financing laws of 1974.

But, to proceed, as do the proponents of H.R. 8617, to eliminate the Hatch Act distinctions between prohibited and permissible activities, and to enumerate only what is prohibited, opens the door to the most far-reaching changes in the political behavior and exposure of Federal civil servants and their appointed superiors. Should this bill be enacted into law, whatever is not prohibited will be permissible.

The bill would specifically prohibit Federal employees from the following activities. It is difficult to disagree in principle with these prohibitions, as far as they go:

Using or attempting to use directly or indirectly official authority or influence to interfere with or affect the result of any election; to intimidate, threaten, coerce, command or influence an individual to vote or not to vote in any elec-

tion, to give or withhold any political contribution, or to engage in any form of political activity whether or not prohibited by law.

Giving or offering a political contribution to any individual either to vote or not to vote, or to vote for or against any candidate or measure in any election.

Soliciting, accepting, or receiving a political contribution to vote or not to vote, or to vote for or against any candidate or measure.

Knowingly giving or handing over a political contribution to a superior.

Knowingly soliciting, accepting or receiving a political contribution from a subordinate or in any room or building used for official duties of a U.S. Government employee or office-holder.

Engaging in political activity while on duty, while wearing uniform or official insignia, or in any room or building used for official Government duties.

What must be stressed to the American people, who have vital stakes in a politically responsible administration and a politically neutral civil service, is what H.R. 8617 would permit once Federal employees have complied with its specific prohibitions. The following activities, now prohibited by the Hatch Act, would be permissible under H.R. 8617:

Taking an active part in political management or in a political campaign of a partisan candidate for public office or political party office;

Serving as an officer of a political party, a member of a national, State, or local committee of a political party, or an officer or member of a committee of a partisan political club, or being a candidate for any of these positions, or organizing or reorganizing a political party organization or club;

Directly or indirectly soliciting, receiving, collecting, handling, disbursing or accounting for assessments, contributions or other funds for a political organization;

Organizing, selling tickets to, promoting or actively participating in a fund-raising activity of a partisan candidate, political party, or club;

Becoming a partisan candidate for or campaigning for elective public office;

Soliciting votes in support of or in opposition to a partisan candidate for public office or political party office;

Acting as recorder, watcher, challenger, or similar officer at the polls on behalf of a political party or partisan candidate; driving voters to the polls on behalf of a political party or partisan candidate;

Endorsing or opposing a partisan candidate for public office or political party office in a political advertisement, a broadcast, campaign literature or similar material;

Addressing a convention, caucus, rally or similar gathering of a political party in support of or in opposition to a partisan candidate for public or political party office;

Serving as a delegate, alternate or proxy to a political party convention;

Initiating or circulating a partisan nominating petition.

Mr. President, my distinguished colleagues who oppose this bill have been joined by spokesmen for Federal employees who share their concerns, and by commentators in the press and media who have no illusions about the broad thrust of H.R. 8617, in pointing out the dangers it portends. I will note only briefly some of these dangers because I wish to base my opposition mainly on what I consider overriding constitutional questions:

The specter of employees with investigative responsibilities and access to information regarding the private lives of citizens, using their positions to exert political pressure.

The increasing vulnerability of Federal employees to solicitations for political contributions as a result of working in settings where they would be exposed to politically active superiors and co-workers.

Increasing suspicions among appointed officials that they were not receiving politically neutral recommendations from career officials who would, depending on circumstances, be inclined to curry political favor with or score political points against the administration in power.

Increasing numbers of Federal employees campaigning for office, or participating actively in managing campaigns, while attempting to render fair service to the taxpayers in their civil service positions.

Furthermore, Mr. President, we must ask whether increasing the level of political activity within the Federal service will tend eventually to build within the Federal Establishment the kinds of employee pressures which have contributed in no small way to the financial difficulties facing New York City and other municipalities.

The leaders of major Government employee unions and of organized labor have campaigned aggressively for passage of this bill. That is their right. But I question whether their concern is principally for the political liberties of the

individual Federal employee, or for expanding the political power and influence and political fund raising capabilities of their organizations, in and through the public service.

Perhaps they would answer that there is no conflict—that there is an inseparable relationship between the political rights of the employee and his ability to exercise those rights in or through legitimate employee organizations. If so, I would further question whether H.R. 8617 will propel us rapidly down uncharted paths in the relations between politically active Federal employees on the one hand and Federal employee organizations functioning as labor unions on the other. I believe the bill would have that result and fear that neither the Congress nor the American people are alert to the possibility and prepared to cope with it.

These considerations pale in the long view, Mr. President, against basic constitutional questions which must be addressed.

Both those for and against this bill must ultimately rest their case on the first amendment to the Constitution and its guarantees of free speech, assembly and petition for redress of grievances. That is the ground on which the Federal courts will stand.

A sound analysis of the first amendment implications underlying Hatch Act reform recently has been made by John R. Bolton in "The Hatch Act, A Civil Libertarian Defense," published by the American Enterprise Institute. I commend this study to my colleagues who, weary of much of the current rhetoric about the pros and cons of H.R. 8617, may wish to examine the issues in objective and constitutional terms.

Mr. Bolton's purpose in large part is to examine the first amendment values supporting restraints on the partisan activities of Federal employees. The substance of his thesis is that—

Government workers have a right to be free from political coercion—particularly from any systematic solicitation by either their superiors or their co-workers. Since the power to coerce derives in substantial amount from power vested in the government, the Hatch Act is, in effect, a case of the government restraining itself. Non-governmental employees have similar First Amendment rights—the right not to have their freedom to engage in political activity "chilled" by political activities who also administer government programs and regulatory or law-enforcement agencies.

On the question of employee coercion he comments:

It is with some uncertainty we can conclude that with respect to preventing the

coercion of federal workers, the act as currently written is more desirable than a reform moving in the direction of H.R. 8617. Nevertheless, against a demonstrated historical background of employee coercion, and with the use of public employee unions that represent a potential source of pressure on the individual employee at least as great as that represented by his supervisor, caution in the effective repeal of a statute that has functioned at least adequately is warranted. Such caution is especially justified because the First Amendment rights against coerced political activity of numerous government workers may hang in the balance.

On the public's right to have its freedoms protected from political activists who also administer Government programs, and incidentally on the enlarged role of public employee unions, Mr. Bolton observes that—

As noted previously, when the Hatch Act was passed, large and powerful public employee unions did not exist. Now they do, and the possibilities for concerted action to influence public policy (and therefore the general public) are far greater than they were thirty-five years ago. Just as concern is properly voiced when governmental power is improperly used to coerce federal workers, so too concern is warranted when individuals subject to the government's power are restrained or pressured. The monopoly of legitimate coercive power vested in the government and the access to it by government

employees warrant restraints on the government and its workers so that the state's power is not used in unintended ways.

His final conclusion expresses well my own thoughts on the measure before us:

Until someone drafts an alternative statute that fully protects both government employees and those who deal with the federal government from having their First Amendment rights to express themselves chilled, the Hatch Act, with all its deficiencies, still provides a significant measure of protection. To abandon it completely would risk not only politicizing some elements of the federal bureaucracy, but also chilling the political activities of much of the rest of the nation. A risk so inconsistent with fundamental First Amendment values should not be taken.

Mr. President, the problem before us is typical of major legislation. We must weigh the pros and cons, assess the risks. I find the risks to our political institutions, to the quality of the public service, and to our constitutional guarantees far too grave to support H.R. 8617 as reported by the Post Office and Civil Service Committee. I urge my colleagues not to support this measure unless major amendments along the lines of those proposed by my distinguished colleagues, the senior Senator from Hawaii and the junior Senator from Kansas, are adopted.

CONGRESSIONAL RECORD—SENATE

March 11, 1976

FEDERAL EMPLOYEES' POLITICAL
ACTIVITIES ACT OF 1975

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of the unfinished business, H.R. 8617, which the clerk will state by title.

The legislative clerk read as follows:

A bill (H.R. 8617) to restore to Federal civilian and Postal Service employees their rights to participate voluntarily, as private citizens, in the political processes of the Nation, to protect such employees from improper political solicitations, and for other purposes.

The PRESIDING OFFICER. The pending question is on the amendment of the Senator from Hawaii, No. 1409, which the clerk will state.

The legislative clerk proceeded to read the amendment.

Mr. FONG. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 7, line 6, strike out "or".

On page 7, line 8, strike out the period and insert in lieu thereof a comma and "or".

On page 7, between lines 8 and 9, insert the following:

"(4) (A) at any time, if such employee, in the discharge of his official duties, has such contact with the public as to become a public figure identified with the formulation, prescription, implementation, or interpretation of any policy of the Government, or is an employee of the Department of Justice, the Internal Revenue Service, the Central Intelligence Agency, the National Security Agency, or the Defense Intelligence Agency, except that such employee may voluntarily make a political contribution of money to a candidate for elective office in accordance with the provisions of section 7324 of this title.

"(B) The provisions of subparagraph (A) of this paragraph do not apply to any officer or employee appointed by the President, by and with the advice and consent of the Senate."

The PRESIDING OFFICER. The time for debate on this amendment is limited to 1 hour to be equally divided and controlled by the Senator from Hawaii (Mr. FONG) and the Senator from Wyoming (Mr. MCGEE).

Mr. FONG. Mr. President, I yield myself whatever time is needed.

Mr. President, this amendment, No. 1409, deals with a two-pronged problem: First, how to make clear in the public's mind that Federal employees are politically neutral in carrying out their Government duties, and second, how to keep the civil service impartial and nonpartisan.

Also, in this amendment, I have suggested an exemption for those persons who are appointed by the President with the advice and consent of the Senate.

This amendment goes to the very heart of our governmental system of checks and balances, for any President, whatever party he belongs to, must have high level officials who are in a position to defend the policies of his administration. Since such persons may be fairly said to be "on duty" virtually all of the time, and since their defense of administration policies will inevitably drift into what might be termed "political activity," this exemption is entirely appropriate.

Without such an exemption they, and the President, would be hamstrung in attempting to defend the administration's policies. And without a dialog between an administration and its critics our system of checks and balances would be much the poorer.

With regard to keeping the Federal civil service politically impartial in carrying out the Government's business, the Civil Service and the career Federal responsibility of enforcing the Hatch Act, has repeatedly expressed its deep concern over the public's perception of the civil service and the career Federal employee. Chairman Robert Hampton told the Senate Committee:

When the public sees a Federal employee who is prominently identified with partisan politics, and is at the same time charged with responsibility for the impartial nonpartisan execution of public duties, it will inevitably have doubts about that employee's impartiality.

Suppose, for example, that a particular employee is involved with administering a Federal program in some remote part of the country outside the Washington, D.C., area. To the members of the public in that locality, that particular employee is the Federal Government.

Now, suppose that the employee actively campaigns for a candidate who advocates

major changes in the programs involved. What is the public's perception of the way that employee is administering his part of the program? Can the public have confidence that the program is being administered for their benefit consistent with the will of Congress who provided for the program in the first place?

If the general counsel of the Civil Service Commission were known to be an active campaigner and fundraiser for a political party, who would believe his report as to that party's abuse of the merit system?

What would be the public reaction to an Internal Revenue Service agent who investigates tax fraud, and in the same community solicits campaign funds so he or a friend can run for office?

The Commissioner of the Internal Revenue Service, in testimony before the Senate committee, stated:

I think the American people would quickly lose confidence in the integrity of an internal revenue system which permitted its employees to be aid political partisans one day and expect them to be perceived the next as wholly nonpartisan by both political friends and foes.

Or consider an individual—John Q. Public—who is being audited by the IRS and knows that the IRS agent conducting the audit is the campaign manager for a particular candidate. Even if John Q. Public really prefers the other candidate, he will think twice before campaigning for him. In fact, he will probably be inclined to work for the candidate favored by the IRS employee in hopes that his political activity would affect the results of the audit.

Or consider a census employee who runs for political office in a geographical area for which he has responsibility. Where does the employee stop and the politician begin? How do you continue to convince the public that their responses to census questionnaires are held in the strictest confidence when the enumerator or another census employee is actively involved in partisan political activity contrary to the views of the respondent?

The Civil Service Commission is convinced that some restriction on the ability of public employees to identify themselves prominently with partisan political party success is essential to an effective merit system. I agree.

Therefore, I am proposing this amendment. Its purpose is to prohibit Federal employees who are prominently identified in the public's eye with the determination or execution of governmental policy from taking part in political activity at any time, whether on duty or not. Employees intended to be covered by this

amendment are, besides Internal Revenue personnel, such employees as the Federal Prosecutor handling fraud cases; the farm agent distributing cash assistance; the Small Business Administration employees approving or rejecting a loan; and the contracting officer and the grant officer who make day-to-day decisions.

Federal law enforcement and investigative agencies would also be included, because their employees should definitely be beyond the reach of political influence. H.R. 8617 would authorize and invite the politicizing of the Justice Department, the FBI, and the U.S. attorneys' offices as well as the CIA, the National Security Agency, and the Defense Intelligence Agency. My amendment is designed to do just the opposite—to restrict employees of these and similar agencies from participation in political activity at any time, whether on duty or not.

Its adoption would assure the American people of the impartial, nonpartisan integrity of the system in the executive branch of our Government.

Representative ELIZABETH HOLTZMAN has emphasized:

If there is one lesson we should have learned from Watergate, it is that we must strive to reduce, rather than increase, political influence in the Federal law enforcement and investigative agencies. This bill (H.R. 8617) would, instead, authorize and invite the politicizing of the Justice Department, FBI, U.S. Attorneys' Offices, and Internal Revenue Service, as well as the CIA, National Security Agency and Defense Intelligence Agency.

She posed the hypothetical situation of a U.S. attorney or a district director of Internal Revenue pledged to a particular candidate, and asked how exacting the enforcement of the appropriate statute against their favored candidate would be.

Equally as deleterious as favoritism to a particular partisan candidate is the possibility for discriminatory enforcement against other candidates or their supporters. Such discrimination could be motivated by distaste for a candidate's philosophy, or from personal, political ambition. Repeal of the Hatch Act's prohibitions against partisan activity would, for instance, allow a U.S. attorney with political ambitions to enforce the criminal provisions of the Federal Election Campaign Act against an incumbent Senator or Representative or other potential opponent, and then run for that same office himself as a vindicator of "campaign reform" laws.

Here are still more illustrations of potential problem cases:

An FBI agent is assigned to investi-

gate alleged illegal activities in a campaign in which he was actively involved. Must he remove himself from the case? If so, can the Government afford the expense and high level of unproductivity as a result of thousands of Federal employees removing themselves from sensitive positions, because of potential conflicts of interest? It is unlikely that an FBI agent who is the chief fundraiser for a partisan political party would continue to be viewed by the public as an impartial, objective enforcer of our criminal code.

A nonpartisan city manager, who also happens to control the purse strings for Federal grant funds, is urged to support a candidate for office. If he selects the wrong candidate, his city will suffer. He cannot afford to guess wrong. The real loser in this situation and similar ones is the public.

The list could go on endlessly. My amendment, if adopted, would prevent such cases from arising, because none of the Federal employees involved would be permitted to participate in partisan political activity at any time, whether on duty or not. Such politicking by such employees is now prohibited, and my amendment would continue the prohibition in order to keep the Federal civil service impartial and nonpartisan. I urge the adoption of my amendment.

Mr. President, I yield the floor.

Mr. McGEE. Mr. President, I rise to object to my colleague's proposed amendment, amendment No. 1409, for very basic reasons contained in the original bill.

I appreciate the point that Senator Fong is making as he seeks to exempt from the provisions of the proposed bill some of the sensitive agencies of Government, but their sensitivity is already rigidly protected and guaranteed. Any violation, any distortion, any demeaning activity on the part of any employee is a serious offense even now, and this bill does not touch any of those severely restrictive guidelines and penalties for violations.

What the bill does is guarantee to any Federal employee, whatever he is doing, the right to participate in the mainstream of American political activity as a citizen. If there were a CIA employee, a Justice Department employee, or an Internal Revenue Service employee who sought to utilize sensitive information because he was running for county clerk, the law as it exists would prosecute him.

It is important that we not let the sensitivity of those agencies spill over into the bill as a result of the blanket legislation proposed here in the Sena-

tor's amendment. We ought to be reminded that there are several thousands of secretaries, clerks, and just plain citizens in every one of those agencies of the Government, and they should not be penalized as the Senator's amendment would penalize them.

This amendment is over broad and, in some ways, as vague as the Hatch Act. Its intent is to deny employees of the Department of Justice, the Internal Revenue Service, the Central Intelligence Agency, the National Security Agency, or the Defense Intelligence Agency, the right to participate in the political processes. But it does so by simply stating that they cannot engage in political activity at all.

The bill itself permits all political activity except that specifically restricted by language. Presumably, these employees, then, would be denied the right to take part in nonpartisan activity, even. That is a right they have now.

This restriction also would run to an employee if he has such contact with the public as to become a public figure identified with the formulation, prescription, implementation, or interpretation of any policy of the Government.

That is most arbitrary and most vague. Who is a public figure? Who is to decide that, the TV networks, the local newspaper, the employee himself, or his boss? The amendment does not say.

The committee did not differentiate among different groups of employees, because there are other provisions of law which guard, for instance, against their disclosing classified or confidential information, such as a taxpayer's return might contain.

It must be remembered that this amendment was another one of those that was weighed and received consideration in the committee, and the vote was either 6 to 2 or 7 to 2, whatever the division was, against it. After weighing all the aspects of the amendment very carefully, and they were very thoughtfully presented by Senator Fong, it was decided that there were no new risks introduced in any way by the bill. It was decided in fact that his proposed amendment would actually remove some of the participation, such as in nonpartisan elections, that members of those agencies of the Government even now enjoy.

We see no conflict and no risk in permitting them to be ordinary citizens off the job and off the premises, so long as

the same heavy guardianship of sensitive matters exists.

The point is that this is the case, even at the present time, and as a result my

recommendation would be that the Senate vote "no" on this amendment.

Mr. FONG. Mr. President, although the bill before us does have a prohibition against coercion and against an employee using whatever knowledge he may gain from his employment against another, nevertheless here we have situations in which subtle influences creep in just because a man is in a very sensitive position and persuade him, from the standpoint of what he is doing, so that this man who is checking him and investigating him may be more lenient toward him, to believe that he should do things that would put him in favor in the eyes of the man who is auditing him.

For instance, if a city manager is asking for a grant from the Federal Government for his city, and he knows that this Federal employee is campaigning for candidate A, will he dare vote for candidate B? Because if he does vote for candidate B, this Federal employee may not give him the grant he is asking for, may not give him the amount he wants, or may delay his grant. So it puts him in a very precarious position.

A taxpayer may have his tax returns audited. The auditor, he knows, is active in the campaign of candidate X. Can a man whose returns are being audited work for the campaign of some candidate running against candidate X? The situation is one in which the man who is on the other side of the table from the Federal employee, because of his active participation in politics for one candidate or the other or one party or the other, is inclined to do what that man is doing.

We are trying, by this amendment, to eliminate this kind of subtle influence, this kind of pressure, which can never be proved in any court of law or brought up as a case for investigation, because it is always subjective in the mind of the receiver who is sitting opposite the Federal employee, and who, because of the actions and activities of the Federal employee, is inclined to go along with him. This is the type of situation we are trying to do away with.

Mr. McGEE. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is not a sufficient second.

Mr. McGEE. I suggest the absence of a quorum for the purpose of acquiring the necessary bodies.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. McGEE. Mr. President, I ask unanimous consent that the order for

the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McGEE. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. McGEE. Mr. President, all debate has been completed. We can proceed to the vote.

The PRESIDING OFFICER. All time has been yielded back.

The question is on agreeing to the amendment of the Senator from Hawaii. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Mississippi (Mr. EASTLAND), the Senator from Alaska (Mr. GRAVEL), the Senator from Michigan (Mr. HART), the Senator from Hawaii (Mr. INOUE), the Senator from South Dakota (Mr. MCGOVERN), and the Senator from California (Mr. TUNNEY) are necessarily absent.

I further announce that the Senator from New Mexico (Mr. MONTONA) is absent on official business.

Mr. GRIFFIN. I announce that the Senator from Nebraska (Mr. Hruska), the Senator from Idaho (Mr. McCLURE), and the Senator from Vermont (Mr. STAFFORD) are necessarily absent.

I further announce that, if present and voting, the Senator from Nebraska (Mr. Hruska) would vote "yea."

The result was announced—yeas 44, nays 46, as follows:

[Rollcall Vote No. 59 Leg.]

YEAS—44

Allen	Ford	Proxmire
Baker	Garn	Ribicoff
Bartlett	Goldwater	Roth
Beall	Griffin	Scott, Hugh
Bellmon	Hansen	Scott,
Biden	Helms	William L.
Brook	Hollings	Stennis
Buckley	Huddleston	Stone
Byrd,	Johnston	Taft
Harry F., Jr.	Laxalt	Talmadge
Chiles	Long	Thurmond
Curtis	McClellan	Tower
Dole	Nelson	Weicker
Domenici	Packwood	Young
Fannin	Pearson	
Fong	Percy	

NAYS—46

Abourezk	Hart, Gary	Mondale
Bayh	Hartke	Morgan
Bentsen	Haskell	Moss
Brooke	Hatfield	Muskie
Bumpers	Hathaway	Nunn
Burdick	Humphrey	Pastore
Byrd, Robert C.	Jackson	Pell
Cannon	Javits	Randolph
Case	Kennedy	Schweiker
Church	Leahy	Sparkman
Clark	Magnuson	Stevens
Cranston	Mansfield	Stevenson
Culver	Mathias	Symington
Durkin	McGee	Williams
Eagleton	McIntyre	
Glenn	Metcalf	

NOT VOTING—10

Eastland	Inouye	Stafford
Gravel	McClure	Tunney
Hart, Philip A.	McGovern	
Hruska	Montoya	

So Mr. FONG's amendment (No. 1409) was rejected.

Mr. MCGEE. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1434

The PRESIDING OFFICER (Mr. FORD). Under the previous order, the Senate will now proceed to the consideration of the amendment of the Senator from Wisconsin (Mr. NELSON), amendment No. 1434, which the clerk will state.

The assistant legislative clerk read as follows:

The Senator from Wisconsin (Mr. NELSON) proposes amendment No. 1434.

The amendment is as follows:

On page 8, strike out lines 2 through 23.
On page 8, line 24, strike out "(b)", and insert in lieu thereof "(a)".

On page 9, lines 3 through 5, strike out "Such leave shall be in addition to leave without pay of such employee under subsection (a) of this section."

On page 9, line 6, strike out "(c)", and insert in lieu thereof "(b)".

On page 9, line 9, strike out "(d)", and insert in lieu thereof "(c)".

The PRESIDING OFFICER. The time for debate on this amendment is limited to 1 hour to be equally divided and controlled by the Senator from Wisconsin (Mr. NELSON) and the Senator from Wyoming (Mr. MCGEE).

Mr. NELSON. Mr. President, the amendment which is now the pending business—

The PRESIDING OFFICER. The Senator will suspend. The Senate will come to order. Senators will remove themselves from the well. The Senator from Wisconsin is due the courtesy of being heard.

Let me get the Senator some order. The Senator may proceed.

Mr. NELSON. Mr. President, this amendment simply deletes that section of the bill that provides statutory leave for any Federal employee who decides to become a candidate for a full-time political office. In other words, the bill now provides, pursuant to the Hathaway amendment adopted yesterday, that when a candidate announces for office he must then take a leave of absence. That means, of course, he is off the job from the time he announces his candidacy, whether it be 6 months, 8 months, 12 months, or a year and a half in advance, and that when the campaign is over, if the candidate has lost, he is then entitled as a matter of right to have his job back.

This leave of absence and guaranteed reemployment represents a privilege and right which employees in the private sector do not have. The bill would make Federal employees a special and privileged class. It is bad public policy. It ought to be eliminated from the bill.

If this section were deleted, a Federal employee would still have the right to announce for public office, run for public office, use his own accumulated leave time to run for public office, and engage in political activities off the job, in the evening or on weekends.

Those rights would not be affected by the amendment. All that would be affected is the right and the requirement by law that leave be taken when the Federal employee announces for office.

Mr. MCGEE. Will the Senator yield for a request for the yeas and nays? I assume he wants the yeas and nays?

Mr. NELSON. Yes.

Mr. MCGEE. I ask for the yeas and nays, Mr. President.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Wisconsin may proceed.

Mr. NELSON. Mr. President, I ask unanimous consent that Ira Shapiro of my staff be granted privilege of the floor during the course of the debate on this amendment and the rollcall.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. NELSON. Mr. President, is the agreed time 1 hour?

The PRESIDING OFFICER. The agreed time is 1 hour equally divided between the Senator from Wisconsin and the Senator from Wyoming (Mr. MCGEE).

Mr. NELSON. Mr. President, under section 7326 of the committee's bill, as amended by Senator HATHAWAY, any Federal employee who is a candidate for

any elective office must be granted leave without pay to engage in activities relating to his candidacy, if he requests it. If a Federal employee is seeking a full-time elective office, he shall be placed on leave without pay when he becomes a candidate for office. The employee would also be entitled to use accrued annual leave time to further his candidacy. If the campaign ended in defeat, the employee would be guaranteed immediate return to his position in the Federal Government.

In my view, these leave provisions grant Federal employees a right unknown to employees in the private sector and take no account of the Government's interest in continued smooth operation. This amendment would eliminate those parts of section 7326 which permit or require Federal employees to take leave without pay to run for office. The employees would retain their right to use accrued annual leave for the purpose of furthering their candidacy, but beyond that they would have to run for office in their spare time or resign from the Federal Government to run full time.

Proponents of this bill have repeatedly stated that the legislation is intended to restore full citizenship to Federal employees by according them the same rights enjoyed by employees in the private sector. The leave provisions of this bill go beyond that objective. There is no class of employees in the private domain who have the absolute freedom to announce their candidacy, take a prolonged leave of absence to run for office, and have their jobs guaranteed to them when they return. Rather, the fact is that people who run for office often make sacrifices and take risks. Many candidates must campaign in the evenings and on weekends because they cannot obtain a leave of absence from their jobs. Other candidates decide that the positions they seek require a full-time effort and resign their jobs, but without any guaranteed right of reemployment if they should lose. While there are sound reasons for removing restrictions on Federal employees' opportunities to participate in the political process, that does not justify the creation of a preferred status for Federal employees.

In addition to boosting the Federal employee into preferred status, the leave provisions of the committee bill reflect no concern for the continued smooth operation of government. Under this bill as drafted or the Hathaway amendment, if adopted, leaves of absence for 6 months to a year or more would be mandated by statute for those seeking full-time office and permitted for those seeking part-time office.

Under the committee's bill, an individual would be entitled to a prolonged leave and immediate reinstatement in his job regardless of the position held. The employee would be entitled to leave and reinstatement even if the agency was forced to hire someone else to replace him, and that replacement proved to be exceptionally qualified. In fact, the employee seeking office would be entitled to leave and reinstatement even if he decided to run for Congress for 8 months or a year in each of several consecutive elections. While easing the way for Federal employees to run for office, the legislation fails to consider the interest of the Government and the public.

We are surrounded by evidence that the taxpaying public views the Federal Government with cynicism and distrust. If we retain the leave provisions presently in this bill, we will be telling the public two things: First, Federal employees can eat their cake and have it too; and second, no job in the Federal Government is really very important, since extended leaves and guaranteed instant reemployment are available to all Federal employees.

Mr. President, I reserve the remainder of my time.

Mr. THURMOND. Will the Senator yield me 5 seconds to get a staff member floor privilege?

Mr. NELSON. I have yielded the floor.

The PRESIDING OFFICER. Who yields time?

Mr. McGEE. I yield the Senator 5 seconds.

The PRESIDING OFFICER. The Senator from South Carolina may proceed.

Mr. THURMOND. Mr. President, I ask unanimous consent that my staff member Bill Coates be granted privilege of the floor during the consideration of this bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McGEE. Mr. President, I rise to oppose, on behalf of the committee, the proposal from my distinguished colleague from Wisconsin. The reason is very simple and elementary.

As I understand his proposed amendment, it would, in effect, require a Federal employee, who had not had the foresight to marry a rich wife, or who had no independent business income, or other means of income, to exercise his option on a leave of absence. Under our present system, a businessman can take as much leave as he wants to run for the Senate, and he often does. If he is defeated, he goes back to his own business. A lawyer can go back to his own firm—and this body is heavily populated by members of the legal profession.

I think one of the lowest blows we

could strike here would be to penalize an ordinary Federal employee, without other means of support, by denying him a leave

of absence to run for public office with the understanding that if he were defeated, he could return to his job.

I hate to remind my colleague, but he is looking at someone that would not have, because he could not have, run for the Senate as a public employee without a leave of absence. A candidate should have to pay his own expenses, but when the election is finished, if he is defeated, he should be able to come back to his old job.

If one is not financially independent, he would be penalized by the Senator's amendment. This is the reason his amendment runs against the grain of the basic ideas presented in the proposed bill. I hope that my colleague from Wisconsin will weigh that very carefully because it penalizes the man or woman without means.

The PRESIDING OFFICER. Will the Senator suspend? The Senate will come to order. The Senator is entitled to be heard.

Mr. McGEE. It would be the first time, Mr. President, that I had not been heard, no matter what the commotion. I appreciate the thoughtfulness of the Chair.

It is simply a matter of equity for a person without means. For someone to have to depend only upon his own cumulative leave is taking what little reserve he has without providing any adequacy in terms of the time necessary to carry out a meaningful campaign.

I am mindful of the Senator's proposal that a man could announce his candidacy 2 years in advance and, as a result, qualify for it. But I think that is really posing on extreme.

We are simply trying to make certain that an individual has to take a leave of absence so as not be on his job while contending a political position.

The point is that we do not think he ought to be discriminated against. And there is more than just my own sensitivity to the problem. It just so happens that I think my case is a good example; 4,000 copies of professional books in my library would not have gotten me very far, under the circumstances. I had to have the assurance that my position, with whatever it represented, remained in case I was defeated. Once elected, of course, my job terminated immediately, as it should have.

Mr. PASTORE. Will the Senator yield?

Mr. McGEE. I am glad to yield on my time to the Senator.

Mr. PASTORE. This is not related to the argument the Senator is now making, but this is a question I would like to pose.

Naturally, of course, if this bill passes, it brings the civil servant into the political arena, and when he comes into the political arena, of course, there are no bars to constitute any limitation whatsoever.

Does this mean that a person who has a civil service job can buy a \$100 ticket for a political banquet?

Mr. McGEE. He can, if he does it on his own, voluntarily. He cannot, however, be solicited by his superior or his supervisor.

Mr. PASTORE. Can he be solicited by the candidate?

Mr. McGEE. He can be solicited by anyone off the premises, with the exception I have noted before.

Mr. PASTORE. Can he be solicited?

Mr. McGEE. Off the premises, off the job.

Mr. PASTORE. No. The point I am making here is, if a Senator is a candidate for reelection, can he within the propriety of the law go up to a civil servant and say, "I would like to have you buy a \$100 ticket to my banquet."

Can he do that?

Mr. McGEE. Off the job.

Mr. PASTORE. What is meant by "off the job"?

All right, in my house, I ask him—

Mr. McGEE. That is right. The same as any other citizen. One goes door to door and does not know who is there.

Mr. PASTORE. But does the Senator not see, that may be so, but he is just not another citizen. He is a gentleman who hold a job, or a woman who holds a job, in the civil employment of the Government.

I am wondering whether or not in the process of giving him this freedom to seek office—with which I find no fault—whether or not we are not putting the rank and file in the position that they may be pressured into engaging in certain political affairs. Involuntarily, of course. They do not have to buy the ticket, but we know what happens if they do not.

The question in my mind is, are we going to limit it too far in accommodating candidates as against accommodating the civil servant employee?

Mr. McGEE. The feeling of the committee in its vote of 7 to 2 on that issue was that voluntary contributions would be permitted as a matter of judgment, and any pressure, even any subtle pressure, would be prosecutable before the Commission.

Mr. PASTORE. But the Senator is talking about pressure by his superiors.

Mr. McGEE. Right.

Mr. PASTORE. I am talking about pressure from a candidate.

Mr. McGEE. The same pressure that

would go on in any community now.

Mr. PASTORE. It cannot now be done. Now if one goes up to a civil employee, the employee will say, "I am sorry, I would love to do it but I cannot engage in political affairs. I am prohibited by the Hatch Act."

Mr. McGEE. What would the Senator do with the employee under the present law? Go up and say, "I will fix you, I will reduce your salary?"

Mr. PASTORE. No; to have in there that no candidate can pressure a civil service employee to buy a ticket. Why not put that in the law?

Mr. McGEE. I see no objection to putting it in the law. I say to my colleague: It seems to me it is almost implicitly there, anyway. A Federal employee who is subjected to browbeating by a man running for the Senate, or under any other kind of duress, is a mature adult and is not about to be dragooned into an action that he would not want to voluntarily take, any more than any other citizen.

Mr. PASTORE. I have been in public life for 41 years and I have seen a lot of dragooning, whether we like it or not. The point is: It the possibility and the probability in the statute that we are now passing that from now on in we are going to affect a person who has a civil service job, who is protected by the Hatch Act which excludes him from political activity, from being pressured by any candidate to buy tickets to his testimonial, to his campaign, or make a contribution? From now on in they will be able to make a contribution; will they not?

Mr. McGEE. If it is voluntary. The criminal sanctions section of the bill defines the consequences of any kind of pressure that can be verified. Such pressure is illegal under the legislation and can be penalized. So it is spelled out in the bill. That is the reason we think the problem is adequately covered. The Senator should look at that section of the bill.

Mr. PASTORE. I realize the implicit of the section the Senator speaks of. I am familiar with it. I am talking about something different and I believe the Senator understands me. I was hoping that possibly, in the review of this matter, we would insert some very strong language to the effect that these people shall not be solicited by any candidate for a contribution for anybody's campaign.

Mr. McGEE. The proposal is that it should be the decision of any civil servant whether he wants to contribute, but he should not be solicited.

Mr. PASTORE. He should not be solicited. It should be against the law.

Mr. McGEE. I hope we can work out language that would do that.

Mr. PASTORE. I hope the Senator will, because I would then find myself more kindly inclined toward the bill.

Mr. FONG. Will the distinguished Senator from Wisconsin yield me some time?

Mr. NELSON. How much time does the Senator from Wisconsin have?

The PRESIDING OFFICER. Twenty-six minutes.

Mr. FONG. I would like to engage in a colloquy with the distinguished Senator from Wisconsin on his amendment.

Mr. NELSON. I would like to respond briefly to some of the issues raised by the distinguished Senator from Wyoming, and then I have agreed to yield time to the Senator from Florida. I would be glad to give time then to the Senator from Hawaii.

Mr. President, the proponent of the bill, the Senator from Wyoming, makes the argument that a businessman or a lawyer is in a privileged position, to run, and that the Federal employee does not have the same right as they do.

But the Senator is forgetting that there are 70 million people in this country who are employees who do not have that right. There is no way for everyone to stand in exactly the same position. The point I am making is that in the private sector, where more than 90 percent of all the people work in this country, there is no class of employees who have the right to go to the employer and say, "I am going to take 1 year off whether you like it or not to exercise my right to run for office. And if I am defeated, I am coming back to my job, whether you like it or not, and the public is going to carry the overhead."

Under the leave provision in the committee bill, a Federal employee could be the chief deputy of an agency, a key man in that agency. He would be allowed to take leave to run for office. He would have to be replaced for a year. If he lost, he would then be able to come back, bump the man who replaced him, and immediately reclaim his job. Then suppose 1 year goes by and he still wants to go to Congress. He would be entitled to leave again and guaranteed reemployment again.

Mr. CHILES. Will the Senator yield at that point?

Mr. NELSON. Yes.

Mr. CHILES. If he is that chief man in that agency, does the Senator think he has a little leverage in his campaign over all of those people who are then under him? If he is not successful, he comes back. If he is successful, he obtains

a job, whether it is as a U.S. Senator or a Congressman, whatever it is. Does the Senator think he kind of has a ready-made organization under him that will have to work for him and we are going to do just what we said we were not doing in this act if we give him this absolute right?

Mr. NELSON. There is no question there would be some advantage, but it is there, as soon as you give him the right to run under any circumstances.

Mr. CHILES. No. If he can come back and have the job absolutely, then we give him a much greater advantage, do we not?

Mr. NELSON. That is correct.

I do not know how we can run an agency or a department if employees can take off 6 months or 1 year out of every 2 years. They can have a lot of money under the committee's bill, some Federal employees who have financial resources of their own or parents who are well off could take a leave, run for 6 months or a year, reclaim their guaranteed job and repeat the process a year later if they wanted to run again.

Mr. CHILES. I believe the Senator from Wisconsin has put his finger on a very strong point. I thought I was supporting this legislation because this was going to allow the poor Federal employee the same rights as an ordinary citizen, the same franchise rights, to be able to go out and express himself in elections, and even be a candidate, if he sought to be one, to run for city commissioner or to do other things. But I now find from what the Senator is pointing out that under this amendment he not only has the same rights but superior rights, because he has this guarantee to come back and the absolute right to take the lead.

As the Senator points out, I do not know anybody else who favors this. I am now facing a bill that I thought was giving people ordinary franchise rights and I now find it is elevating; it is giving them tremendous rights. I cannot understand that at all. Perhaps it is fostered upon us because the distinguished chairman of the committee arrived here because he had these rights and he wants to convey them to everyone else. That is great if he can convey them to everyone. But I believe in this bill he is only conveying them to Federal employees and he is not conveying them to the ordinary citizens who I thought we were elevating by this bill, the Federal employees, to reach that class status.

Mr. NELSON. If there were an overwhelming public interest to mandate by statute the right to leave a public job and

run for office, why is there not an overwhelming public interest to mandate that any private employee can go to the employer and have the same right? The taxpayer will be paying the cost of the replacement, the inefficiency and the disruption. That taxpayer is not entitled to that right himself. He is just paying to run the Government and to repay people who take off. But when he wants to take off to run for office, he does not have the right to tell the employer he wants his job back and is going to have it back by statute after he gets defeated in the next election.

It is just very bad public policy, in my judgment.

I yield to the Senator from Hawaii.

Mr. FONG. As the bill came from the committee, we allowed the Federal employee to take leave at either one of these two times: 90 days before the election, or at the time he announced, whichever is the later. So the only period that the employee can be on leave would be 90 days, at the most, as the bill came out of the committee.

Mr. NELSON. Mr. President, may I ask the Senator a question at that point?

Mr. FONG. Yes.

Mr. NELSON. Ninety days before the primary election and 90 days before the general election, right?

Mr. FONG. That is right.

Mr. NELSON. So we are really talking about a minimum of 6 months in any event.

Mr. FONG. Maybe 6 months, yes. But with the Hathaway amendment, we eliminated the 90 days, and provided that the time he announces shall be the time he will go on leave. So any time, now, he can go on leave, as soon as he announces.

Mr. NELSON. Correct.

Mr. FONG. If he announces 2 years beforehand, he goes on leave 2 years beforehand, is that correct, under the present bill?

Mr. NELSON. The Hathaway amendment provides that he must go on leave when he announces his candidacy, and he controls when he announces, so if he wants to announce 2 years before the election he can do it.

Mr. FONG. Yes. If he announces 2 years in advance, he will have 2 years of leave.

Mr. NELSON. That is correct.

Mr. FONG. And if he loses, he comes back and gets his job back.

Mr. NELSON. That is correct.

Mr. FONG. And if he was head man of the agency, he gets his head job back again.

Mr. NELSON. If it is a civil service position, yes.

Mr. FONG. I want to say to the Senator from Wisconsin that I was arguing all day yesterday on my amendments on that very point, which I feel is a coercion and is bringing pressure upon the Federal employees. For example, in this case, the distinguished Senator from Florida was alluding to a man who comes in as the supervisor of the agency, and the people under him will be more or less forced to contribute to his campaigns, because if he wins he will be in a position to take care of them, and if he loses he will come back and supervise them. So they will be forced to give him some kind of contribution without his asking for it.

Yesterday I had several amendments to deal with the fact that one employee could not solicit another employee, regardless of the superior-subordinate relationship. The bill as we now have it provides that a superior shall not solicit from a subordinate, but any employee can solicit from another employee. So we will find that a person who runs for a Federal office will be in a better position to get money and services from his fellow employees.

I support the amendment of the distinguished Senator from Wisconsin.

Mr. NELSON. Mr. President, I reserve the remainder of my time.

Mr. McGEE. Mr. President, what is the time situation?

The PRESIDING OFFICER. The Senator from Wyoming has 19 minutes. The Senator from Wisconsin has 17 minutes.

Mr. NELSON. Did the Chair say 7, or 17?

The PRESIDING OFFICER. The Senator from Wisconsin has 17 minutes.

Mr. McGEE. If I were to take 2 minutes, so we would each have 17 remaining, would the Senator be interested in yielding back the time?

Mr. NELSON. Mr. President, I will be glad to do that unless the Senator says something so persuasive it requires a response.

Mr. McGEE. All that would require would be a change of vote.

With that understanding, Mr. President, I yield myself 2 minutes.

Mr. NELSON. Go ahead, and then we will see whether I wish to respond.

Mr. McGEE. Mr. President, I have yielded myself these 2 minutes to make the point that the effect of the Senator's amendment would be that no Federal employee could, in most cases, afford to exercise the option to run for some kind of public office, because without the legislation protecting his job he would be out of business.

In most of the private sector—and we have had occasion to investigate this as

well—if an employee wants to run for the State legislature, for example, the company for which he works is usually rather interested in having him in the State legislature. This commonly occurs. But that is neither here nor there on this proposal.

The question is whether it is a wise decision. If it is wise, then it ought to become standard to make sure we do not deny the opportunity of running for office to those who occupy the lower echelons of Federal service. For that reason,

I hope the amendment of the Senator from Wisconsin will be defeated.

I can say, from experience, that whatever motivation there may be to get you out of your job does not contribute anything to your political success. I am sure the Senator has his tongue in his cheek when he makes that kind of argument, because a man in that position may have a malicious motivation in applauding someone else's retirement to gain a notch, but we do not do that.

Mr. NELSON. I must have misunderstood. What was the Senator's point?

Mr. McGEE. The point I am making is that there is no consequence in trying to get rid of an administrator or supervisor farther up the line by electing him to some office so that you can move up the line. That was the point of the Senator from Florida.

Mr. NELSON. Oh, I thought the Senator said it was my argument.

Mr. McGEE. No, I am talking about all the arguments that have been made on this proposal. I say that they are arguments based on extreme circumstances that do not occur in the mainstream of politics.

The PRESIDING OFFICER. The Senator's 2 minutes have expired.

Mr. McGEE. Mr. President, I am prepared to yield back the remainder of my time if the Senator from Wisconsin is willing. We can make that agreement flexible.

Mr. NELSON. Mr. President, the distinguished Senator from Wyoming did not say anything very persuasive, so I am willing to yield back the remainder of my time.

Mr. McGEE. Let the record show that I did not say anything very persuasive so that the Senator from Wisconsin would not feel the necessity to respond.

The PRESIDING OFFICER. The question is on agreeing to the amendment (No. 1434) of the Senator from Wisconsin (Mr. NELSON). On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Mississippi (Mr. EASTLAND), the Senator from Hawaii (Mr. INOUE), the Senator from South Dakota (Mr. MCGOVERN), and the Senator from California (Mr. TUNNEY) are necessarily absent.

I further announce that the Senator from New Mexico (Mr. MONTOYA) is absent on official business.

Mr. GRIFFIN. I announce that the Senator from Nebraska (Mr. HRUSKA), the Senator from Idaho (Mr. McCLOURE), and the Senator from Vermont (Mr. STAFFORD) are necessarily absent.

I further announce that, if present and voting, the Senator from Nebraska (Mr. HRUSKA) would vote "yea."

The result was announced—yeas 67, nays 25, as follows:

[Rollcall Vote No. 60 Leg.]

YEAS—67

Abourezk	Bentsen	Bumpers
Allen	Biden	Byrd
Baker	Brock	Harry F., Jr.
Bartlett	Brooke	Byrd, Robert C.
Bellmon	Buckley	Cannon

Chiles	Hatfield	Pell
Church	Helms	Percy
Curtis	Hollings	Proxmire
Dole	Huddleston	Randolph
Domenici	Humphrey	Ribicoff
Durkin	Kennedy	Roth
Eagleton	Laxalt	Scott, Hugh
Fannin	Long	Scott,
Fong	Magnuson	William L.
Ford	Mansfield	Stennis
Garn	McClellan	Stevenson
Glenn	McIntyre	Stone
Goldwater	Mondale	Symington
Gravel	Morgan	Talmadge
Griffin	Nelson	Thurmond
Hansen	Nunn	Tower
Hart, Gary	Packwood	Weicker
Hart, Philip A.	Pearson	Young

NAYS—25

Bayh	Hathaway	Muskie
Beall	Jackson	Pastore
Burdick	Javits	Schweiker
Case	Johnston	Sparkman
Clark	Leahy	Stevens
Cranston	Mathias	Taft
Culver	McGee	Williams
Hartke	Metcalf	
Haskell	Moss	

NOT VOTING—8

Eastland	McCleure	Stafford
Hruska	McGovern	Tunney
Inouye	Montoya	

So Mr. NELSON's amendment No. 1434 was agreed to.

AMENDMENT NO. 1408

Mr. MCGEE. Mr. President, while there are Members here, we have a short amendment that is now pending by Senator FONG, amendment No. 1408. We anticipate no delay on it, so the Members might be able to adjust their time accordingly. There are no more than 10 or 12 minutes at the most, after which we will have a rollcall.

We ask for the yeas and nays.

The PRESIDING OFFICER (Mr. CULVER). Is there objection to ordering the yeas and nays at this point? The Chair hears none.

Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. FONG. Mr. President, I ask unanimous consent that the Senator from Ohio (Mr. GLENN) be permitted to make a unanimous-consent request.

Mr. GLENN. I ask unanimous consent that a member of my staff, Walker Nolan, be accorded floor privileges during consideration of this amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FONG. Mr. President, I call up amendment No. 1408 and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk proceeded to read the amendment.

Mr. FONG. I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 4, line 9, strike out the semicolon and "and" and insert in lieu thereof a period.

On page 4, line 10, strike out all through line 12.

Beginning on page 9, line 12, strike out all through page 12, line 2, and insert in lieu thereof the following:

"§ 7327. Functions of the Commission

"It shall be the function of the Civil Service Commission to hear and decide cases regarding violations of section 7323, 7324, and 7325 of this title."

On page 12, lines 9 and 10, strike out "approval of the Board for the period specified in such approval" and insert in lieu thereof "determination of the Commission".

On page 13, line 7, strike out "submit to the Board and".

On page 13, line 17, strike out "file with the Board" and insert in lieu thereof "file with the Commission".

On page 13, line 19, strike out "Board" and insert in lieu thereof "Commission".

On page 13, line 22, strike out "Board" and insert in lieu thereof "Commission".

On page 14, line 18, strike out "Board" and insert in lieu thereof "Commission".

On page 14, line 21, strike out "Board" and insert in lieu thereof "Commission".

On page 15, line 4, strike out "Board" and insert in lieu thereof "Commission".

On page 15, line 6, strike out "upon the Board, the Commission, and" and insert in lieu thereof "upon the Commission and".

On page 15, line 9, strike out "Board" and insert in lieu thereof "Commission".

On page 15, line 10, strike out "Board" and insert in lieu thereof "Commission".

On page 15, line 16, strike out "Board" and insert in lieu thereof "Commission".

On page 15, line 18, strike out "Board" and insert in lieu thereof "Commission".

On page 15, line 19, strike out "the Commission or".

On page 15, line 25, strike out "Board" and insert in lieu thereof "Commission".

On page 16, line 1, strike out "Board" and insert in lieu thereof "Commission".

On page 16, line 2, strike out "Board" and insert in lieu thereof "Commission".

On page 16, line 6, strike out "Board" and insert in lieu thereof "Commission".

On page 16, line 11, strike out "Board" and insert in lieu thereof "Commission".

On page 16, line 12, strike out "Board" and insert in lieu thereof "Commission".

On page 16, line 15, strike out "Board" and insert in lieu thereof "Commission".

On page 16, line 20, strike out "Board" and insert in lieu thereof "Commission".

On page 16, line 22, strike out "Board's" and insert in lieu thereof "Commission's".

On page 16, line 24, strike out "Board" and insert in lieu thereof "Commission".

On page 17, line 1, strike out "Board" and insert in lieu thereof "Commission".

On page 17, line 4, strike out "Board" and insert in lieu thereof "Commission".

On page 17, line 6, strike out "Board" and insert in lieu thereof "Commission".

On page 17, line 10, strike out "Board" and insert in lieu thereof "Commission".

On page 18, line 1, strike out "Board" and insert in lieu thereof "Commission".

On page 18, line 3, strike out "Board's" and insert in lieu thereof "Commission's".

On page 18, line 8, strike out "Board's" and insert in lieu thereof "Commission's".

On page 18, line 12, strike out "Board" and insert in lieu thereof "Commission".

On page 18, line 13, strike out "Board's" and insert in lieu thereof "Commission's".

On page 18, line 20, strike out "Board" and insert in lieu thereof "Commission".

On page 18, line 22, strike out "Board" and insert in lieu thereof "Commission".

On page 18, line 24, strike out "Board's" and insert in lieu thereof "Commission's".

On page 19, line 2, strike out "Board's" and insert in lieu thereof "Commission's".

On page 19, line 5, strike out "Board" and insert in lieu thereof "Commission".

On page 19, line 12, strike out "or the Board".

On page 19, line 22, strike out "Board" and insert in lieu thereof "Commission".

On page 20, line 3, strike out "Board" and insert in lieu thereof "Commission".

On page 20, line 5, strike out "Board" and insert in lieu thereof "Commission".

On page 20, line 6, strike out "Board" and insert in lieu thereof "Commission".

On page 20, line 8, strike out "The Board shall notify the Commission," and insert in lieu thereof "The Commission shall notify".

On page 20, line 11, strike out "Board" and insert in lieu thereof "Commission".

On page 23, between lines 3 and 4, strike out:

"7327. Board on Political Activities of Federal Employees."

and insert in lieu thereof:

"7327. Functions of the Commission."

Mr. FONG. Mr. President, this amendment, No. 1408, strikes out of H.R. 8617 all references to the proposed Board of Political Activities of Federal Employees. It places back in the Civil Service Commission, where they now properly belong, the functions of the proposed Board to hear and decide cases on misuse of official authority, solicitation of political contributions, and prohibited political activities. The Commission presently decides these types of cases and has, over the years, developed extensive expertise in the area.

The bill presently provides that the proposed Board would be composed of three Federal employees other than employees of the Civil Service Commission. It can be assumed that they would be high ranking employees, considering the importance of their functions and the fact that they would be appointed by the President with the advice and consent of the Senate. The Board could meet anywhere in the United States to exercise its functions, yet it would not be a full-time Board, since it would only meet at the call of the Chairman.

These provisions could impose a heavy burden on the Board, since the bill implies that the Board members would be doing their regular jobs when the Board was not in session. This divided function by Board members would serve to downplay the important work they must do in this area. It would be simply an add-on to another position and subordinate to the needs of that other position.

Since the bill vests in the Civil Service Commission authority for investigating reports and allegations of any of the activities prohibited by the bill, the logical and efficient agency to hear and decide these cases would be the Commission.

There was no credible evidence introduced during the hearings before either the Senate Committee or House Subcommittee that the Commission's performance of the responsibilities which would now be assumed by the proposed Board has ever been inadequate or subject to serious criticism. Therefore, there is no need for a new Board.

The handling of Hatch Act complaints under present Civil Service Commission procedures presents no conflict.

NO CONFLICT IN KEEPING ENTIRE HATCH ACT PROCEDURE AT CSC

It has been argued that it is somehow improper or unethical for the Civil Service Commission to handle all of the administrative aspects of Hatch Act cases. I disagree. The facts of the matter indicate that the Civil Service Commission is particularly careful to delineate and keep separate the areas of prosecuting,

judging, and the making of a final decision by the Commission.

The General Counsel's Office of the Commission is responsible for investigating alleged Hatch Act violations and for deciding the appropriateness of prosecution. The General Counsel exercises independent prosecutorial discretion in such matters.

If it appears to the General Counsel that the evidence shows a violation of the Hatch Act which warrants prosecution, a letter of charges is issued, the respondent's answer is considered, and the case may then be forwarded to an Administrative Law Judge for a hearing.

The Administrative Law Judge schedules a hearing, considers the evidence, and issues a recommended decision, which is forwarded to the three Civil Service Commissioners for a final decision.

The Commission makes its decision based entirely on the total record thus compiled.

The Civil Service Commission has been particularly careful to keep these three functions separate so that not even the appearance of a conflict can arise.

If the decision of the Commission is that the employee should be removed, the employee then has the option, under the Administrative Procedure Act, to proceed to Federal District Court for judicial review of the Commission's decision.

JUDICIAL REVIEW

Proponents of this bill have indicated that "existing law makes no provision for judicial review of the Commission's decisions regarding Federal employees." This statement is not altogether clear and correct, and needs to be clarified.

While the present Hatch Act does not make specific provision for judicial review, Federal employees may nonetheless obtain judicial review of the Commission's Hatch Act decisions under the general provisions of the Administrative Procedure Act. Under 5 United States Code 702: "A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof." and at section 704: "... final agency action for which there is no other adequate remedy in a court [is] subject to judicial review."

Thus although it is true that there is not a specific grant of judicial review with respect to Hatch Act cases arising under present law, Federal employees certainly do have access to the Federal courts for review of final Hatch Act determinations made by the Civil Service Commission.

Mr. McGEE. Mr. President, I am leaning the other way on this matter. In the bill, we have created a kind of supplemental commission, appointed by the President and made up of Federal employees, to be in what we thought would be a more independent position than that of the Civil Service Commission. Under the present system, the Civil Service Commission is both the prosecutor and the judge. We wanted to have, if we could, a more independent judgment.

But I think there is a very fine line drawn here, and even a very shadowy line in places. I would say to my colleague, the Senator from Hawaii, that in light of his comments on this and my reflections on it I would be inclined to recommend that we accept his amendment. I would not feel that strongly opposed to it.

Mr. FONG. I would like to have a roll-call vote, Mr. President, because we have advised our colleagues there would be a rollcall vote.

Mr. McGEE. That is fine with me, and we will recommend, so far as the committee and so far as I am concerned, acceptance.

Mr. FONG. I ask for a rollcall vote.

The PRESIDING OFFICER. The yeas and nays have been ordered.

Mr. McGEE. We yield back the time available.

The PRESIDING OFFICER. The question is on agreeing to the amendment (No. 1408) of the Senator from Hawaii.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Mississippi (Mr. EASTLAND), the Senator from Hawaii (Mr. INOUYE), the Senator from South Dakota (Mr. McGOVERN), and the Senator from California (Mr. TUNNEY) are necessarily absent.

I further announce that the Senator from New Mexico (Mr. MONTROYA) is absent on official business.

Mr. GRIFFIN. I announce that the Senator from New Mexico (Mr. DOMENICI), the Senator from Arizona (Mr. GOLDWATER), the Senator from Nebraska (Mr. HRUSKA), the Senator from Idaho (Mr. McCLURE), and the Senator from Oregon (Mr. PACKWOOD) are necessarily absent.

I further announce that, if present and voting, the Senator from Nebraska (Mr. HRUSKA) would vote "yea."

The result was announced—yeas 73, nays 17, as follows:

[Rollcall Vote No. 61 Leg.]

YEAS—73

Allen	Ford	Nunn
Baker	Garn	Pastore
Bartlett	Gravel	Pearson
Bayh	Griffin	Pell
Beall	Hansen	Percy
Bellmon	Hart, Gary	Randolph
Bentsen	Hatfield	Ribicoff
Biden	Hathaway	Roth
Brock	Helms	Schweiker
Buckley	Hollings	Scott, Hugh
Bumpers	Huddleston	Scott,
Burdick	Javits	William L.
Byrd,	Laxalt	Sparkman
Harry F., Jr.	Leahy	Stafford
Byrd, Robert C.	Long	Stennis
Cannon	Magnuson	Stevens
Case	Mathias	Stevenson
Chiles	McClellan	Stone
Church	McGee	Symington
Curtis	McIntyre	Taft
Dole	Metcalf	Talmadge
Durkin	Morgan	Thurmond
Eagleton	Moss	Tower
Fannin	Muskie	Weicker
Fong	Nelson	Young

NAYS—17

Abourezk	Hart, Philip A.	Kennedy
Brooke	Hartke	Mansfield
Clark	Haskell	Mondale
Cranston	Humphrey	Proxmire
Culver	Jackson	Williams
Glenn	Johnston	

NOT VOTING—10

Domenici	Inouye	Packwood
Eastland	McClure	Tunney
Goldwater	McGovern	
Hruska	Montoya	

So the amendment was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senator from Kansas (Mr. DOLE) may be recognized to call up three amendments in succession, and that the vote occur on the first of the three amendments at 2 o'clock today, the time to be equally divided between Mr. DOLE and Mr. McGEE on each of the amendments; and that on the second and third rollcall votes, which would be back-to-back after the first one, there be a 10-minute limitation on each of the two back-to-back rollcall votes.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. ROBERT C. BYRD. I also ask unanimous consent that once Mr. DOLE and Mr. McGEE and others have completed their discussions on the three amendments by Mr. DOLE, other amendments may be called up in the meantime, with the understanding that the votes would not occur on such other amendments until after the back-to-back votes have been taken.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Kansas is recognized.

AMENDMENT NO. 1352 AS MODIFIED

Mr. DOLE. Mr. President, I call up an amendment which I have at the desk, and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Kansas (Mr. DOLE) proposes an amendment numbered 1352, as modified.

Mr. DOLE. I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE's amendment (No. 1352, as modified) is as follows:

On page 24, beginning with line 21, strike out all through page 25, line 2, and insert in lieu thereof the following:

(f) The amendments made by this section shall take effect on January 1, 1977.

Mr. DOLE. Mr. President, very simply, this amendment establishes January 1, 1977, as the effective date for the amendments to the United States Code made by this bill, instead of the 90th day after enactment of the measure.

The substantial and significant changes in the Hatch Act law created by H.R. 8617 will naturally result in confusion and uncertainty in the minds of Federal employees as to what particular types of partisan political activity they may, or may not engage in. It is both impractical and dangerous to implement this drastic alteration of long-established principles in the midst of a campaign period, and only months before a major national election takes place. At best, a good deal of confusion would result among Federal employees regarding permissible political activities. At worst, serious violations of prohibited campaign activity would occur on a wide scale, endangering the careers of Federal employees and the outcome of some elections.

It is important that congressional approval of this bill neither now or later be construed as having an inappropriate impact upon the November 1976 elections. At the same time, it is important that the congressional vote on H.R. 8617 is not in any way influenced by the political pressures of this election year.

To avoid any of these possibilities, it would be far better that the relaxation of limitations on campaign activity by Federal employees be scheduled for implementation in a smooth and orderly fashion next year, rather than in the heat of a charged political atmosphere which will certainly be in evidence during the next several weeks. It would be far more advisable for these major

changes in the Hatch Act to become effective in the nonpolitical environment immediately following the elections this fall.

Mr. President, I have no further comments on this particular amendment. I think perhaps Mr. McGEE will return to respond at a later time.

AMENDMENT NO. 1416

Mr. DOLE. Mr. President, I now call up my amendment No. 1416.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Kansas (Mr. DOLE), for himself and Mr. BENTSEN, proposes an amendment numbered 1416.

Mr. DOLE's amendment (No. 1416) is as follows:

On page 5, line 20, insert "(a)" immediately before "An".

On page 6, between lines 21 and 22, insert the following:

"(b) In addition to the prohibitions of subsection (a), an employee of the Internal Revenue Service, the Justice Department, or the Central Intelligence Agency, (except one appointed by the President, by and with the advice and consent of the Senate), may not request or receive from, or give to, an employee, a Member of Congress, or an officer of a uniformed service a political contribution."

On page 7, insert immediately below line 24 the following:

"(c) (1) In addition to the prohibitions of subsection (a), an employee of the Internal Revenue Service, the Justice Department, or the Central Intelligence Agency (except one appointed by the President, by and with the advice and consent of the Senate, who determines policies to be pursued by the United States in the nationwide administration of Federal laws) may not take an active part in political management or political campaigns unless such part—

"(A) is in connection with (1) an election and preceding campaign if none of the candidates is to be nominated or elected at that election as representing a party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected, or (1) a question which is not specifically identified with a National or State political party or political party of a territory or possession of the United States; or

"(B) is permitted by regulations prescribed by the Civil Service Commission and involves the municipality or political subdivision in which such employee resides, when—

"(1) the municipality or political subdivision is in Maryland or Virginia and in the immediate vicinity of the District of Columbia, or is a municipality in which a majority of voters are employed by the Government of the United States; and

"(2) the Commission determines that because of special or unusual circumstances which exist in the municipality or political

subdivision it is in the domestic interest of the employees to permit political participation.

"(2) For the purpose of this subsection, the phrase 'an active part in political management or in political campaigns' means those acts of political management or political campaigning which were prohibited on the part of employees in the competitive service before July 19, 1940, by the determination of the Civil Service Commission under the rules prescribed by the President."

Mr. DOLE. Mr. President, this amendment prohibits employees of the Internal Revenue Service, the Central Intelligence Agency, and the Justice Department from giving a political contribution to another employee, a Member of Congress, or an officer of a uniformed service. It also prohibits the employee from requesting or receiving a political contribution from any of these persons.

Also, this amendment prohibits employees of the IRS, the CIA, and the Justice Department from taking an active part in political management or political campaigns, except where nonpartisan candidates or questions are involved, and except where "unusual" circumstances exist—that is, a majority of local voters are Federal employees.

These prohibitions on political activities of employees of the IRS, the CIA, and the Justice Department are in addition to those otherwise imposed upon them under the provisions of H.R. 8617.

The restrictions are no more severe than those now in effect for all Federal employees. Under current law, Federal employees are also prohibited from giving or receiving contributions to or from other Federal employees, Members of Congress, or officers in the uniformed services. These employees can, of course, make financial contributions to a political party or organization, and there is nothing in my amendment which would restrict that right.

This amendment simply extends certain prohibitions currently in effect for employees of these three agencies—as well as for all Federal employees.

Active involvement in partisan political activity by employees of these three agencies significantly increases the potential for abuse of privileged and private information about American citizens, as well as the potential for injecting political considerations into staff promotions and job security. The evident, or assumed, sacrifice of fairness and impartiality in the operations of these agencies would cast a shadow on their reputation, at a time when public faith in intelligence agencies and other Government offices handling private information is already at a low level.

JUSTICE DEPARTMENT AND THE CIA

Official representatives of both the Internal Revenue Service and the Justice Department have already informed congressional committees of their objections and opposition to legislation which would revise the present Hatch Act provisions to allow for greater employee involvement in partisan political activity. Furthermore, the Senate Watergate Committee, in its final report, recommended continued strong enforcement of the Hatch Act restrictions on Justice Department officials, as did the report of the Watergate Special Prosecution Force issued in October 1975.

INTERNAL REVENUE SERVICE

We have ample testimony from representatives of the IRS that revision of Hatch Act prohibitions would have a serious detrimental impact on this agency. Donald Alexander, Commissioner of IRS, testified last November that he doubted "either the fact or the appearance of objectivity and nonpartisanship could be achieved" if IRS employees were permitted to manage partisan campaigns or to run for office themselves. "Conflicts of interest, in appearance as well as in fact, must be avoided if public confidence is to be gained and kept," according to Commissioner Alexander. Existing laws against improper use of confidential information are extremely difficult to enforce, according to the Commissioner. He advised the chairman of the Senate Post Office and Civil Service Committee that the provisions of H.R. 8617 could increase the inclination to violate these laws.

Commissioner Alexander also expressed fear that political preferences would carry over into the office and result in "a return to the spoils system" for hiring and advancement. Recognizing that H.R. 8617 might well be enacted despite these objections, Commissioner Alexander himself suggested an amendment reflecting the same basic content as that which I am offering today, to exclude IRS agents from expanded political involvement.

The alternative would be to permit officials and employees of the IRS to spend their evenings working in political campaigns, at party headquarters, as fundraisers, or in other capacities, while during their days, they process, audit, and rule upon the tax returns of citizens who trust the integrity, fairness, and impartiality of the tax system. We cannot risk sacrificing this agency's integrity or the public's confidence in it. Furthermore, the sole factors for advancement within the IRS should continue to be only merit, efficiency, and public service.

For many of the same reasons cited above, employees of both the Justice Department and the Central Intelligence Agency should remain under existing restraints on active partisan political involvement. It is unlikely that Justice Department employees who become actively associated with partisan political campaigns would continue to be viewed by the public as impartial and objective enforcers of our criminal code. The ready access to confidential files by even the lowest ranking clerks and typists could seriously endanger the integrity of both our political system and the Justice Department. Even more important, the Federal Bureau of Investigation—which is within the Department—would also continue to be restrained from overt partisan activities. Like their counterparts in the Central Intelligence Agency, FBI agents who investigate alleged illegal activities could simultaneously work for candidates for political office in campaigns that could benefit from the knowledge turned up in those investigations.

In June of last year, the Acting Assistant Attorney General at the Justice Department expressed the Department's "strong opposition" to legislation which would no longer require FBI personnel to abstain from active political involvement. "The Department of Justice feels it to be essential to the future success of the FBI that it continue to maintain the public image of complete detachment from political affairs," according to that official.

It is by no means less important that those involved in the protection of our Nation's security on the international scene be set apart from partisan politics. CIA employees, like those of the Justice Department, must uphold both the image and substance of an objective security agency.

It is in the interests of both the public and the Federal service that employees of these particular agencies should be excluded from the provisions of legislation permitting active participation by Federal employees in partisan political activity.

Mr. President, I ask unanimous consent to have printed in the RECORD letters from Mr. Donald C. Alexander, Commissioner of Internal Revenue Service, and Mr. A. Mitchell McConnell, Jr., Acting Assistant Attorney General, with reference to their opposition to H.R. 8617, as expressed in the House Committee report on H.R. 8617.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE,
Washington, D.C., May 13, 1975.

Hon. DAVID N. HENDERSON,
Chairman, House Post Office and Civil Service
Committee, House of Representatives,
Washington, D.C.

DEAR CHAIRMAN HENDERSON: I understand that Congressman Clay is now conducting a series of hearings by his subcommittee on H.R. 3000, a bill to revise the present Hatch Act, which restricts political activity of government employees. While I was not invited to testify on this legislation, I have read the bill, and testimony about it, including a strong statement in opposition by Chairman Hampton of the Civil Service Commission. It seems to me that if H.R. 3000 passes in its present form, it would damage the appearance of non-partisan objectivity in the conduct of Federal tax administration, which I believe is essential to maintaining public confidence in the Internal Revenue Service.

The Service's top manager in the North-Atlantic Region, Regional Commissioner Elliott Gray, recently testified on the bill before Congressman Clay in New York City. Mr. Gray was appearing in his private capacity as a concerned citizen and life-time civil servant, rather than as a representative of the Administration. I am attaching a copy of his statement, which I believe is an excellent expression of the problems we in Internal Revenue see in H.R. 3000.

The Civil Service Commission has a fine booklet, on the "Do's" and "Don't's" for employee political activity, under the present Hatch Act. The trouble is that too many Federal employees are not familiar with these rules, and they lean over backward and avoid even permissible political activities. It would be helpful if the present specific restrictions, the "Do's" and "Don't's", were spelled out clearly in the law itself, rather than being inferred from a body of Civil Service Commission and court decisions on a vaguely-worded statute.

I also would like to see provision for a positive education program for government employees, on what they can and can't do in political matters. Perhaps this could be jointly undertaken by the Civil Service Commission, agency training officials, and the unions, with materials and training aids provided by government funds. I would also like to see authorization for a flexible range of penalties and corrective actions, administered in accordance with the circumstances of particular cases of infringement on the rules.

What I definitely would not like to see, however, and certainly not in the Internal Revenue Service, is a return to the bad old days when officials and employees whose actions and decisions affect individual members of the public, are themselves candidates for political office while serving in government jobs, or actively campaign for partisan candidates, under party sponsorship. It strikes me as improper for a revenue agent or revenue officer to go out soliciting the public for votes either for himself, as a party candidate, or for a political nominee of a party. That is what H.R. 3000 would al-

low, and I hope such provisions are deleted before the bill moves further toward enactment.

With kind regards,
Sincerely,

DONALD C. ALEXANDER.

Hon. DAVID N. HENDERSON,
Chairman, Committee on Post Office and
Civil Service, House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice on H.R. 3000, a bill "To restore to Federal civilian employees their rights to participate, as private citizens, in the political life of the Nation, to protect Federal civilian employees from improper political solicitations, and for other purposes."

The chief purpose of H.R. 3000 is to amend the Hatch Act, particularly 5 U.S.C. 7324(a), so as to permit Federal civilian and Postal Service employees to take an active part in political management or in political campaigns in their roles as private citizens and without involving their official authority or influence. Sec. 3(a). Since this provision goes to the heart of the bill, we confine our comments to it.

The phrase "active part in political management or in political campaigns" would be broadly defined (see proposed section 7324(c)), so as to permit participation by Federal employees in political activities such as the following: "Candidacy for service as a delegate in political convention; participation in the deliberations of any primary meeting, mass convention or caucus, addressing the meeting or otherwise taking a prominent part; preparing for, organizing or conducting a political meeting or rally on any partisan political matter; membership in political clubs and organizing of such a club; distributing campaign literature, badges and buttons; publishing or having editorial or managerial connection with partisan political publications; organizing a political parade; initiating and circulating nominating petitions for a partisan candidate, including canvassing for signatures; candidacy for any public office—national, state or at any other local level."

For the purpose of this section, the Hatch Act amendment would also apply to employees of the United States Postal Service. Proposed sec. 7324(d). There is no exemption for components of agencies, such as the Federal Bureau of Investigation of the Department of Justice.

In *U.S. Civil Service Commission v. National Association of Letter Carriers*, 413 U.S. 548 (1973), the Supreme Court recently sustained the constitutionality of 5 U.S.C. 7324(a)(2), which prohibits federal employees from taking an active part in political management or in political campaigns. The Court held that Congress had the power to prevent federal employees from holding a party office; working at the polls; organizing a political party or club; actively participating in fund-raising for a partisan candidate or political party; initiating a partisan nominating petition, soliciting votes for a partisan candidate for public office; or serving as a delegate to a political party convention—

in sum, that Congress had authority to regulate various activities (such as H.R. 3000 would expressly permit), and that such regulation is not barred either by the First Amendment or any other provision of the Constitution. 413 U.S. at 556. In overruling these constitutional objections, the Court said (413 U.S. at 564-565):

"It seems fundamental in the first place that employees in the Executive Branch of the Government, or those working for any of its agencies, should administer the law in

accordance with the will of Congress, rather than in accordance with their own or the will of a political party. They are expected to enforce the law and execute the programs of the Government without bias or favoritism for or against any political party or group or the members thereof. A major thesis of the Hatch Act is that to serve this great end of Government—the impartial execution of the laws—it is essential that federal employees not, for example, take formal positions in political parties, not undertake to play substantial roles in partisan political campaigns and not run for office on partisan political tickets. Forbidding activities like these will reduce the hazards to fair and effective government. . . .

"There is another consideration in this judgment: it is not only important that the Government and its employees in fact avoid practicing political justice, but it is also critical that they appear to the public to be avoiding it, if confidence in the system of representative Government is not to be eroded to a disastrous extent."

As the Court also pointed out, "Until now, the judgment of Congress, the Executive and the country appears to have been that partisan political activities by federal employees must be limited if the Government is to operate effectively . . . and employees themselves are to be sufficiently free from improper influences." *Id.* at 564. We are not aware of any substantial evidence within our recent experience which requires this judgment to be altered.

Apart from its consequences on federal employees in general, H.R. 3000 would be particularly objectionable so far as the Department of Justice is concerned. Under it, personnel of the Federal Bureau of Investigation would no longer have to abstain from taking an "active part in political management or political campaigns," as that term is defined in the bill. The Department of Justice feels it to be essential to the future success of the FBI that it continue to maintain the public image of complete detachment from political affairs.

For the foregoing reasons, the Department of Justice strongly opposes enactment of H.R. 3000.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

A. MITCHELL MCCONNELL, Jr.,
Acting Assistant Attorney General.

Mr. DOLE. Mr. President, I also wish to add the name of the Senator from North Carolina (Mr. MORGAN) as a co-

sponsor to amendment No. 1416.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, I have one additional amendment which is in the process of being modified. So, I suggest the absence of a quorum to be charged against my time.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. BENTSEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BENTSEN. Mr. President, I rise to speak to the amendment that I am cosponsoring with the distinguished Senator from Kansas, amendment No. 1416.

I think it is important to point out that our intention in that particular amendment is to keep all of the current Hatch Act restrictions on employees of the Justice Department, Central Intelligence Agency, and the Internal Revenue Service.

Other amendments have been offered during the debate on the bill that would keep some of the Hatch Act restrictions on many of these agencies. Mr. President, those amendments did not go far enough. That is why I had to vote against some of them. I think the objective has been good. But we cannot tolerate any political activity whatsoever from employees of the CIA, IRS, or Justice Department.

Some of our colleagues may ask why these specific employees should continue to be covered by the Hatch Act. The answer is clear. These people are, in their daily activity, given access to information of a privileged nature, information that often is both personal and sensitive. That kind of information gives employees of these agencies a very real power—whether or not they choose to use it—over potential political rivals or supporters. Mr. President, I am not talking here about any overt, explicit action on the part of an employee of any of these agencies. What I am talking about is the power implicit in the jobs that these employees hold and the information to which they have access. As we have all learned from the Watergate investigation, official power does not have to be explicitly exerted in order to influence people. The simple knowledge that the power exists acts as a form of coercion.

Mr. President, the American people have a right to privacy that would be unconscionably threatened if we allowed employees of these agencies to participate in political campaigns or even give or so-

licit political contributions. As I am sure my colleagues would agree, some of the vital functions of this Nation's Government—that of raising revenue, for example, do involve the collection of private, personal information. We must assure all Americans that private information will remain private, that the information supplied to the Federal Government in good faith is used only for the purposes for which it was supplied.

Mr. President, there is another equally compelling issue at stake here. It is the right of Federal employees to be protected from coercion, and that is what is of concern to me. We have seen some actions by Presidents in the past that, if they had been able to have full access to the Federal employees and tried to influence them politically, we could have had a very serious situation on our hands, even more serious than we already have.

Supporters of H.R. 8617 will argue that the bill includes specific prohibitions against coercion by proscribing certain activities. These prohibitions are inadequate. What employee will come forward to complain about coercion on which he has no documentation when that kind of complaint might cost him a promotion or even his job? Therefore, it is not only the public trust which is threatened by removing the Hatch Act restrictions on employees of the CIA, IRS, and Department of Justice; it is also the security of every one of the employees of these agencies that is threatened. These employees are now secure in the knowledge that no pressure—either implicit or explicit—will be brought to bear on them as a result of the privileged information to which they have access. We must assure them that this kind of security will continue.

So, I urge our colleagues to consider the costs of allowing partisan politics to invade the IRS, the CIA, and the Department of Justice—costs which are enormously high as we have seen as a result of the Watergate affair. I urge that our colleagues support this amendment to keep partisan politics out of the sensitive agencies of Government in order to preserve the integrity of the Government and the trust placed in it by the public.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1412

Mr. DOLE. Mr. President, we are in the process of modifying amendment No. 1412, and I think the modification is about to arrive.

Mr. President, I send amendment 1412, as modified, to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk proceeded to read the amendment as modified.

Mr. DOLE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment, as modified, is as follows:

On page 25, beginning on line 11, insert the following:

"(h) Subject to and in accordance with section 7328 of this title, an employee who is found to have violated on two occasions any provisions of sections 7323, 7324, and 7325 of this title shall, upon a final order of the Board, be removed from such employee's position, in which event that employee may not thereafter hold any position (other than an elected position) as an employee (as defined in section 7322(1) of this title)."

"(i) The Civil Service Commission shall have discretion to determine a penalty for the first violation by any employee."

Mr. DOLE. Mr. President, I ask unanimous consent that the distinguished Senator from New York (Mr. JAVITS) be made a cosponsor of the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, the purpose of the present amendment, as modified, amendment No. 1412, mandates the permanent suspension from employment by the Government of the United States of any employee found guilty on two occasions of violating any prohibited activities prescribed in sections 7323, 7324, and 7325.

As modified, we are directing the amendment to the present act and only to the present act. Under the penalty provision outlined in the sections in the bill, which has been already modified by the adoption of the Fong amendment to strike out the board on political activities and to reinstate the Civil Service Commission, it seems me that flexibility may be advisable for the first-time offenses, given the confusion and uncertainty that would be existing if this bill

should become law because many Federal employees will not know what they can do and what they cannot do. But a stronger penalty should be stipulated for repeated violations both to discourage accidental recurrences and to "weed out" the willful violators of prohibited political activity.

Suspension from Federal service for two cases of violation will encourage all civil servants to be well acquainted with what they are and what they are not permitted to do. It will clearly establish in advance what the consequence of the violation will be.

Under current law, where Hatch Act restrictions are even more pervasive, removal from the job is specifically mandated for all such violations except where the Civil Service Commission advises by unanimous vote the misdeed does not warrant removal.

So it does not make sense in this new consideration to, in any way, dilute this.

We state very clearly in the amendment, part B, that the Civil Service Commission shall have discretion to determine a penalty for the first violation by any employee who is found to have violated on any occasion any provision of sections 7323, 7324, and 7325 of this title.

This would simply make it very clear, if there is a second violation, that discretion is removed. It becomes mandatory then that that person be removed from Federal service. By establishing this mandated penalty in advance, every Federal employee is on notice and will have a clear notion of the seriousness of violating prohibitions on political misdeeds, and recurrences of both accidental and willful violations should be significantly less.

Mr. President, in conclusion, the Senator from Kansas offered three amendments and I assume the Senator from Wyoming will soon speak with reference to those amendments.

The first makes the effective date January 1, 1977, for the reasons outlined earlier. It just seems to this Senator that in the heat of the Presidential campaign in 1976, it makes no sense to implement this act this near the general election.

I, therefore, suggest in amendment No. 1352 that the bill's provisions be made effective January 1, 1977.

Amendment No. 1412, as modified, has just been discussed.

Amendment No. 1416 was discussed earlier, introduced by myself and the distinguished Senator from Texas (Mr.

BENTSEN). It extends the present Hatch Act restrictions on political activities for employees of the IRS, CIA, and the Justice Department.

Mr. President, I yield the floor,

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. (Mr. GLENN). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, I ask unanimous consent that amendment No. 1412 be further modified, and I send it, as further modified, to the desk.

The PRESIDING OFFICER. The clerk will state the amendment as further modified.

The assistant legislative clerk read as follows:

The Senator from Kansas (Mr. DOLE) proposes a further modification of amendment No. 1412, the amendment to then read as follows:

On page 20, between lines 7 and 8, insert the following:

"(b) Subject to and in accordance with section 7328 of this title, an employee who is found to have violated on two occasions any provisions of sections 7323, 7324, and 7325 of this title shall, upon a final order of the Civil Service Commission be removed from such employee's position, in which event that employee may not thereafter hold any position (other than an elected position) as an employee (as defined in section 7322(1) of this title)."

Mr. DOLE. Mr. President, the remarks the Senator from Kansas just delivered with reference to amendment No. 1412, as then modified, would now apply to amendment 1412 as further modified, after discussion with legislative counsel.

Mr. McGEE. Mr. President, my argument is simply that this amendment is unneeded. It would not do fatal damage to the bill, it simply is unneeded. Your committee had established in this act an independent Board to adjudicate allegations of violations. As amended, that power now is back in the hands of the Civil Service Commission, which has wide latitude in fitting the punishment to the crime, as it were. Indeed, in the face of a very serious violation, the Commission could give an employee the boot after a single violation. I do not believe that ever would happen if the law were to say that it took two violations for an employee to be permanently suspended.

It strikes me as unwise and unnecessary to tie the hands of the Commission in this way. Indeed, another effect might be to cause a reluctance to prosecute at all an individual with a previous violation, save in the face of a violation of very serious nature. The committee felt it wiser to let the punishment fit the crime.

Mr. President, I yield for a unanimous-consent request to the Senator from Iowa (Mr. CLARK).

Mr. CLARK. Mr. President, I ask unanimous consent that Mr. Andy Loewi of my staff and Mr. Harrison Wellford of Senator PHILIP HART's staff be granted privileges of the floor during consideration of H.R. 8617.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1433

Mr. CLARK. Mr. President, I ask unanimous consent that my amendment No. 1433 be in order following the disposal of the three pending amendments which are to be voted upon beginning at 2 o'clock.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. CLARK. I ask unanimous consent that there be a time limitation on amendment No. 1433 of 1 hour, to be equally divided between the manager of the bill and myself.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. CLARK. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. McGEE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McGEE. Mr. President, I yield to the distinguished Senator from Massachusetts (Mr. BROOKE) for a unanimous-consent request.

AMENDMENT NO. 1440

Mr. BROOKE. Mr. President, I ask unanimous consent that I be permitted to call up my amendment No. 1440 at this time.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Massachusetts (Mr. BROOKE) proposes an amendment numbered 1440.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its consideration.

Mr. BROOKE's amendment (No. 1440) is as follows:

On page 3, line 19, delete "and".

On page 4, line 2, immediately after the semicolon, add "and".

On page 4, between lines 2 and 3, insert the following:

"(D) includes the provision of personal services for the purpose of influencing the nomination for election, or election, or any individual to elective office or for the purpose of otherwise influencing the results of any election."

Mr. BROOKE. Mr. President, this is a very simple amendment, and I would like to make just a short statement on it.

First amendment rights—rights to freedom of expression, association, and belief—have long been among our most cherished rights. Indeed, they have been the hallmark of our democracy and our Government, and have always been accorded inviolability in our courts, our laws, and our legislatures. Because these rights should be basically untrammelled for all American citizens, I feel strongly that the Federal Employees Political Activities Act of 1975 should be enacted into law.

For too long, the arbitrary and vague body of rules and regulations promulgated by the Civil Service Commission have served to severely limit the participatory rights of thousands of American citizens simply because they are employed by the Federal Government. The experiences of local government with the Federal Election Campaign Act of 1974 indicate that many of the former restrictions under the Hatch Act can be successfully removed without incipient chaos or a rise in partisan politics.

All Americans must be free to participate in national political conventions; to participate more fully in local government; to be able to verbally endorse candidates for political office in accordance with their own political convictions. However, it is equally clear that no partisan political activity can be permitted while Federal employees are on duty. And, no partisan activity must mar the essential character of Federal civil service: success and achievement in Federal employment must continue to rest on merit and personal accomplishment, not on support of partisan political activity.

I support H.R. 8617 as passed by the House and reported out of the Senate Post Office and Civil Service Committee in most respects. The new rules must

be absolutely clear in order to prevent a recurrence of confusion and ambiguity which surrounds the present law.

My colleagues on the Post Office and Civil Service Committee tell me that the definition of "political contributions" contained in section 7322 is phrased in essentially the same language as was used in the Federal Campaign Act of 1974. In that statute, the phrase "anything of value" was interpreted to include personal service.

This kind of subtlety and incorporation by reference of the election is not explicit enough. I propose an amendment which would expressly include "personal service" in the definition of "political contributions" under section 7322. In this way, it will be made clear that no solicitation of personal services for the purpose of influencing partisan political elections will be permitted while Federal employees are on duty.

This clarification will curtail future litigation and contention about the extent to which partisan activity is impermissible while Federal employees are on duty. It is my hope that the Senate will include this modification in the language of the final bill.

Mr. President, I have discussed this with the distinguished floor manager of the bill (Mr. McGEE) and the distinguished ranking Republican member of the committee (Mr. FONG). It is a concept which embodied in one of the amendments proposed by the distinguished Senator from Hawaii (Mr. FONG) yesterday, and voted down. I think it is a good amendment, and it is my understanding that both the floor manager and the minority manager are willing to accept the amendment.

Mr. McGEE. Mr. President, we have agreed to accept the amendment, and we are prepared to act on it at 1 minute to 2, so that we do not violate the unanimous-consent agreement.

Mr. FONG. This is a very fine amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Massachusetts.

The amendment was agreed to.

Mr. DOLE. Mr. President, I ask for the yeas and nays on amendment No. 1412, as modified, and amendment No. 1416.

The PRESIDING OFFICER. Is there objection to ordering the yeas and nays on both amendments by a single show of hands? The Chair hears none, and it is so ordered.

Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. McGEE. Mr. President, we have consulted with the distinguished Senator from Kansas, and we have, after consultation, agreed to the merit of his amendment No. 1352, which would change the effective date of this proposal to January 1, 1977. Its merit, of course, is that it is removed from the context of political harangue during this election year. We are prepared to act upon that amendment by accepting it as a part of the bill.

Mr. FONG. We are willing to accept that.

The PRESIDING OFFICER. The hour of 2 p.m. having arrived, the question is on agreeing to amendment No. 1352, as modified.

The amendment was agreed to.

Mr. McGEE. Parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator will state it.

Mr. McGEE. Did we not accept the amendment by the distinguished Senator from Massachusetts? Has that not been completed?

The PRESIDING OFFICER. The amendment has been agreed to.

Mr. FONG. Mr. President, I ask unanimous consent that Jim Hinish, assistant to Senator FANNIN, be granted privileges of the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McGEE. This amendment proposes to maintain present Hatch Act restrictions on employees of the Internal Revenue Service, the Justice Department, and the Central Intelligence Agency.

It is straightforward in that regard. The committee's position has been not to differentiate among employees, believing that classified and confidential information which comes to them is adequately protected by other provisions of law, including criminal provisions.

An IRS employee, for example, is subject to imprisonment of 1 year, a fine of \$1,000 and dismissal if he violates the confidentiality of a taxpayer's return.

More, the people in this type of sensitive position are judicious, prudent people, or certainly should be. They can be trusted as well as any citizen.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 1416. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Mississippi (Mr. EASTLAND), the Senator from Hawaii (Mr. INOUE), the Senator from South Dakota (Mr. MCGOVERN), and the Senator from California (Mr. TUNNEY) are necessarily absent.

I further announce that the Senator from New Mexico (Mr. MONTROYA) is absent on official business.

Mr. GRIFFIN. I announce that the Senator from Arizona (Mr. GOLDWATER), the Senator from Nebraska (Mr. HRUSKA), the Senator from Idaho (Mr. McCURE), and the Senator from Illinois (Mr. PERCY) are necessarily absent.

I further announce that, if present and voting, the Senator from Nebraska (Mr. HRUSKA) would vote "yea."

The result was announced—yeas 68, nays 23, as follows:

[Rollcall Vote No. 62 Leg.]

YEAS—68

Allen	Garn	Pell
Baker	Griffin	Proxmire
Bartlett	Hansen	Randolph
Beall	Hart, Gary	Ribicoff
Bellmon	Hart, Philip A.	Roth
Bentsen	Hatfield	Scott, Hugh
Biden	Helms	Scott,
Brock	Hollings	William L.
Buckley	Huddleston	Sparkman
Bumpers	Jackson	Stafford
Byrd,	Javits	Stennis
Harry F., Jr.	Johnston	Stevens
Byrd, Robert C.	Laxalt	Stevenson
Cannon	Leahy	Stone
Chiles	Long	Symington
Church	Mansfield	Taft
Clark	McClellan	Talmadge
Curtis	Mondale	Thurmond
Dole	Morgan	Tower
Domenici	Moss	Weicker
Eagleton	Nelson	Williams
Fannin	Nunn	Young
Fong	Packwood	
Ford	Pearson	

NAYS—23

Abourezk	Glenn	Mathias
Bayh	Gravel	McGee
Brooke	Hartke	McIntyre
Burdick	Haskell	Metcalf
Case	Hathaway	Muskie
Cranston	Humphrey	Pastore
Culver	Kennedy	Schweiker
Durkin	Magnuson	

NOT VOTING—9

Eastland	Inouye	Montoya
Goldwater	McCure	Percy
Hruska	McGovern	Tunney

So Mr. DOLE's amendment (No. 1416) was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. JAVITS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER (Mr. GARN). Under the previous order, the Senate will proceed to the vote on amendment No. 1412, as modified. The yeas and nays have been ordered. The clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Mississippi (Mr.

EASTLAND), the Senator from Hawaii (Mr. INOUE), the Senator from South Dakota (Mr. MCGOVERN), and the Senator from California (Mr. TUNNEY) are necessarily absent.

I further announce that the Senator from New Mexico (Mr. MONTROYA) is absent on official business.

Mr. GRIFFIN. I announce that the Senator from Arizona (Mr. GOLDWATER), the Senator from Nebraska (Mr. HRUSKA), the Senator from Idaho (Mr. McCURE), and the Senator from Illinois (Mr. PERCY) are necessarily absent.

I further announce that, if present and voting, the Senator from Nebraska (Mr. HRUSKA) would vote "yea."

The result was announced—yeas 53, nays 38, as follows:

[Rollcall Vote No. 63 Leg.]

YEAS—53

Allen	Ford	Packwood
Baker	Garn	Pearson
Bartlett	Glenn	Randolph
Beall	Griffin	Ribicoff
Bellmon	Hansen	Roth
Bentsen	Hart, Gary	Scott, Hugh
Biden	Hatfield	Scott,
Brock	Helms	William L.
Buckley	Hollings	Sparkman
Bumpers	Huddleston	Stafford
Byrd,	Javits	Stennis
Harry F., Jr.	Johnston	Stone
Chiles	Laxalt	Symington
Curtis	Long	Talmadge
Dole	Mansfield	Thurmond
Domenici	Mathias	Tower
Eagleton	McClellan	Young
Fannin	Morgan	
Fong	Nunn	

NAYS—38

Abourezk	Hart, Philip A.	Moss
Bayh	Hartke	Muskie
Brooke	Haskell	Nelson
Burdick	Hathaway	Pastore
Byrd, Robert C.	Humphrey	Pell
Cannon	Jackson	Proxmire
Case	Kennedy	Schweiker
Church	Leahy	Stevens
Clark	Magnuson	Stevenson
Cranston	McGee	Taft
Culver	McIntyre	Weicker
Durkin	Metcalf	Williams
Gravel	Mondale	

NOT VOTING—9

Eastland	Inouye	Montoya
Goldwater	McCure	Percy
Hruska	McGovern	Tunney

So Mr. DOLE's amendment, as modified, was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. MCGEE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1433

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of amend-

ment No. 1433 of the Senator from Iowa (Mr. CLARK). The clerk will state the amendment.

The legislative clerk read as follows:

The Senator from Iowa (Mr. CLARK) proposes amendment No. 1433.

The amendment is as follows:

On page 7, line 11, insert immediately after the semicolon the word "or".

On page 7, strike out lines 12 through 20.

On page 7, line 21, strike out "(3)" and insert in lieu thereof "(2)".

The PRESIDING OFFICER. On this amendment there will be a 1-hour time limitation, equally divided.

Who yields time?

Mr. CLARK. Mr. President, I would like to ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. CLARK. Mr. President, I strongly support the Federal Employees' Political Activities Act of 1975. For that reason I will vote for it, and I have voted against weakening amendments.

The time is long overdue for Federal employees to be granted the full rights of citizenship enjoyed by all Americans. I congratulate Chairman McGEE and the members of the Committee on Post Office and Civil Service for bringing this much-needed legislation to the floor.

There is, however, one section of the bill about which I am deeply concerned, and about which many other Members are concerned, and which, I think, needs change.

As introduced in the House of Representatives, H.R. 8617 would have prohibited any executive branch employee, including the President and Vice President, from engaging in political activities while on duty or in Government buildings. In order to exempt the President and Vice President, as obviously is necessary, an amendment was adopted in committee in the House. That amendment, now embodied in section 7325(b) excludes from the limits on political activity not only the President and Vice President but all of the more than 500 White House employees as well.

Mr. President, the cure was worse than the disease, for the section now appears to constitute a specific authorization from Congress—at least by negative implication—to allow White House employees to engage in partisan political activities without restriction.

May we have order, Mr. President?

The PRESIDING OFFICER. May we have order in the Senate so the Senator from Iowa can be heard?

Mr. CLARK. The White House staff is now being given exactly the same exemption as the President and Vice President, one section after the other. Is that what we want? Is that what our constituents want? I think not.

The effect of this section could be the use of Federal Treasury dollars to pay White House staff salaries even while these employees work full time on a Presidential campaign. I doubt that this was the intent of the committee in reporting his provision as part of H.R. 8617. Nevertheless, that is its effect. It is the effect for White House employees just as for the President. Both are excepted from these restrictions.

Certainly that was the interpretation of Congressman HERBERT HARRIS, a member of the House Civil Service Committee, who referred to this language as "a congressional 'go-ahead' to the White House staff to engage in political activities on the job."

Mr. President, I ask unanimous consent that the additional views of Congressman HARRIS be printed at this point in the RECORD.

There being no objection, the additional views were ordered to be printed in the Record, as follows:

ADDITIONAL VIEWS OF CONGRESSMAN HERBERT E. HARRIS II

As a cosponsor of H.R. 8617, and as a member of the Subcommittee on Political Rights and Intergovernmental Programs which has worked for 7 months to produce a fair and comprehensive bill, I am in full support of this legislation. The bill has two significant thrusts: it contains important new protections for Federal and postal employees and it provides them clearly defined rights they do not currently enjoy. H.R. 8617 is, in essence a "bill of political rights" for our 2.8 million Federal and postal employees. I voted to report the bill out of subcommittee and full committee.

There is one provision in the bill, however, of concern to me. Section 7325 prohibits political activities while on duty, in any room or building occupied in the discharge of official duties by an employee, or while wearing a uniform identifying the individual as a Federal or postal employee. As amended by the full committee, exempt from this provision are the President, the Vice President and their staffs.

I can understand the argument that it is unrealistic and impractical to expect the President and Vice President to avoid political activity while on the job. They, it can be argued, are on the job around the clock, and they are the only elected officials of the executive branch. However, I consider it highly inappropriate for the White House staff to engage in political activity while on duty in their capacity as employees of the

Chief Executive. I am concerned that not exempting them from this provision would in effect be a congressional "go-ahead" to the White House staff to engage in political activities on the job. It unfortunately puts the Congress in the position of condoning political activity in the White House by White House staffers.

I am concerned that this provision might allow a repeat of the politicizing experience we have come to call "Watergate." Presidential campaigns should be run by campaign committees, and I'm sure the incumbent President will not make the mistakes of his predecessor. But I feel compelled to make it clear that this Member of Congress does not condone campaigns run from behind the White House walls or from the Attorney General's office. I am concerned that the fact that this bill does not expressly prohibit White House staffers from "politicizing" on the job might be interpreted as approval of the practice.

Just as Federal and postal employees should be ever-mindful of separating their work from their politics when carrying on "the people's business," so should the employees of the White House.

Mr. CLARK. My amendment, Mr. President, would prevent any such use of Federal funds by deleting the exemption for the White House staff—I refer to section 7325(b)(2)—so they would be treated like other Federal personnel.

They can engage in campaign activities, but only off duty and not in Government buildings.

Why should the White House staff be treated differently and even given an exemption that Cabinet members are not granted under this act?

Under the law as it now stands, the question of the extent to which White House and other "non-Hatched" employees may engage in campaign activities on duty has not been definitely resolved. With respect to the most flagrant misuse of taxpayer money to support the reelection bid of former President Nixon, a serious challenge has been mounted in a case now pending in the U.S. Court of Appeals for the District of Columbia (*Public Citizen v. Simon*, No. 74-2025). The claim raised in that suit is that where White House employees were shown to have devoted substantially all of their time to partisan politics, while drawing government salaries, they were doing so without congressional authorization as required by the Constitution (article I, section 9, clause 7) and 31 U.S.C. 628.

Under my amendment such gross misuses of office would be prohibited, along with all other on-duty campaign activities, just as they would be for the hundreds of thousands of other public servants who would be prohibited by H.R. 8617 from campaigning on the taxpayer's time and money. And just as it would be

for Cabinet members. Are we going to except over 500 White House employees from this law, while telling Secretary Butz and other members of the Cabinet that they are covered? Where is the consistency?

From the 1972 campaign we are aware of the serious potential abuse which exists when White House employees are used for campaign purposes. This is best illustrated, I believe, by the memorandum to the White House staff issued by Charles Colson, special counsel to the President, on August 28, 1972. Colson made very clear the kind of activity in which he believed White House employees should participate, and they did. Colson wrote to his fellow employees at the White House:

Think to yourself at the beginning of each day, "What am I going to do to help the President's reelection today?" And then at the end of each day think what you did in fact do to help the President's re-election.

Mr. President, I ask unanimous consent that the text of the Colson memorandum be printed at this point in the RECORD.

There being no objection, the text was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Aug. 30, 1972]

A MEMO TO THE WHITE HOUSE STAFF

Charles Colson, special counsel to the President, issued the following memorandum to the White House staff August 28:

There are 71 days left between now and the election. Every single one of these is a campaign day and for those of you who have not been reminded of this lately, every day has 24 hours.

I hope that it will be possible for each one of us to have some time during the campaign occasionally to recharge the batteries: an occasional Sunday afternoon may be possible but don't count on it.

There should be no necessity for this kind of a memo and in the case of most of you there is not. Just so there is no misunderstanding, however, I want to make it perfectly clear what the policy will be for the next 71 days. No one should plan any trips anywhere without my express approval. No one should ever be out of reach of the telephone. The White House switchboard must know at all time where everyone is; each individual member of the staff should insure that he or she can be reached at any time of the day or night either by phone or by pageboy. No speaking engagements should be accepted, no trips should be planned without my knowing and approving in advance.

Many of you have been through political campaigns before. For those who have not, a campaign is a 24-hour a day, 7-day a week job. Do not be lulled into a sense of false security by the polls which show the President well ahead at the moment. They will change. Make every day count. Think to yourself at the beginning of each day, "What

am I going to do to help the President's re-election today?" and then at the end of each day think what you did in fact do to help the President's re-election.

I will be expecting maximum output from every member of the staff for whom I have any responsibility. I will be very intolerant of less than maximum output. I am totally unconcerned with anything other than getting the job done. If I bruise feelings or injure anyone's morale, I will be happy to make amends on the morning of November 8 assuming we have done our job and the results are evident.

I can well understand that any of you may have gotten the wrong impression of me since so many erroneous things have found their way into print lately. Just so you understand me, let me point out that the statement in last week's UPI story that I was once reported to have said that "I would walk over my grandmother if necessary" is absolutely accurate.

Mr. CLARK. Mr. President, if we wish to allow this kind of activity to occur in the White House in the future, then certainly one ought to vote "No" on this amendment—if we want that kind of activity to continue and thereby exempt the White House staff from the restrictions of this bill.

If we are going to allow this practice to be permitted in the future, then, certainly, all we have to do is take no action at all and leave this section in the bill.

There were many other examples, I might say, from 1972. Gordon Strachan spent virtually all of his time, for nearly a year, acting as White House liaison for the Committee for the Re-Election of the President, while drawing a Federal salary. Should that practice be allowed to continue? That is what this amendment is all about.

William Timmons, the chief White House lobbyist, spent 3 weeks in Miami on campaign duties prior to the Republican National Convention, again, while drawing a Federal salary. There were numerous other instances in 1972 where Federal employees were doing campaign work and traveling on campaign trips while continuing on the Federal payroll. While the record is less complete, examples of misuse of staff for partisan campaign work for the 1964 and 1968 campaigns are also documented.

It is not a partisan question—it is a question of right or wrong.

Mr. President, it is fundamentally wrong to have taxpayers providing extra subsidies for the campaign effort of an incumbent candidate for political office, and it is fundamentally unfair to the candidates' opponents. My amendment would prevent such back-door subsidies and save the taxpayers money at the same time.

Certainly, it is not the intent of this amendment to seek to impose arbitrary and unrealistic limitations on the staff of a President who is running for reelection.

Undoubtedly, within the framework of H.R. 8617, the adoption of this amend-

ment would still allow White House staff to engage in incidental political activity which is inextricably connected with their nonpolitical tasks. In this regard, it is important to note that H.R. 8617 contains no definitions for the terms "on duty" or "political activity." The assumption is that the meanings of such terms would have to be developed in regulations written by the nonpartisan and I think highly respected U.S. Civil Service Commission. The Commission, which is appointed by the President, would certainly consult with the White House in constructing reasonable regulations relating to White House staff.

Surely, no one wants to prevent a White House Press Secretary from providing information on a President's political duties, or prevent an appointments secretary from coordinating a President's travel plans with his campaign committee, or prevent a senior aide from discussing politics with a President; no reasonable regulations would prevent such activities.

But we must prevent the White House from being used as a campaign headquarters or a base for political fund-raising. As presently written, H.R. 8617 would allow that to happen, and that is what this vote is really all about.

This amendment may require some reorganization of White House staff, but this problem is not significantly greater for the President than for Senators and Congressmen, many of whom already have taken steps to segregate campaign staff duties from official congressional business. An article in the Washington Post—January 25, 1976—cited numerous examples of our colleagues' taking members of their staffs off their payrolls to participate in their campaigns. Among those cited for following this procedure were: Senators BAYH, BENTSEN, BUCKLEY, ROBERT C. BYRD, JACKSON, JAVITS, and MONDALE, and Representative UDALL.

H.R. 8617—and the Hatch Act itself—applies only to executive branch employees, nevertheless, as Chairman McGEE can confirm, I have given serious consideration to offering an amendment which would cover both White House and congressional employees. That would, in my judgment, only be fair and consistent.

However, I have been dissuaded from offering such an amendment because of the germaneness problem that inevitably would arise in the House of Representatives. It would be declared out of order.

But one thing must be clear to everyone. A vote in favor of the pending amendment should be understood by each of us to be a pledge to the public to make the same kind of separations between campaign activities and official duties that he would impose on the White House, and which H.R. 8617 already imposes on the rest of the executive.

There are a number of practical reasons why I believe that Members of Congress will follow the spirit of this amendment. After Watergate, the press and public undoubtedly will focus closely on incumbents' use of staff for campaign purposes. Properly, they should do

so. In addition, the provisions of the Federal Election Campaign Act will be applicable regardless of the fate of this amendment. If a congressional staff employee is working on a campaign while on duty, this may well constitute a contribution of services which must be reported by the candidate.

Thus, quite apart from whether we enact a statute to cover Congress, there will be a strong incentive to comply with the spirit of this amendment, even though it will apply literally only to the White House. As a member of the Subcommittee on Privileges and Elections, I will be working to develop legislation which would clarify further the question of political activity by White House and congressional employees. Certainly, the same standard ought to apply to both.

Mr. President, by failing to pass this amendment, we will be creating a new series of problems which may undermine the goals of fairness in the Federal election law. For example, what is the obligation of a President to report as campaign contributions the on-duty services rendered his campaign by White House employees? Even more important, the use of White House personnel, unless the value of their services were deducted from expenditure limitations and Federal grants, would create a situation in which a President would have an unfair and unjustifiable advantage over his competitors. That inequality could well undermine the entire election law, as it applies to Presidents. The preservation of that law, it seems to me, is a small price to pay for minor administrative difficulties.

In offering this amendment, I am not suggesting that this administration, more or less than others, is likely to convert the White House staff into political campaign operatives. But there can be no doubt that H.R. 8617 as now written, will give presidents of either party carte blanche to use their taxpayer supported staffs for whatever political activities they choose. My amendment would prevent that from happening and I urge its adoption.

Mr. President, this amendment has the strong support of Common Cause and Ralph Nader, and I ask unanimous consent that letters from David Cohen, President of Common Cause and Mr. Nader appear at this point in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

COMMON CAUSE,

Washington, D.C., March 10, 1976.

DEAR SENATOR: During upcoming floor consideration of H.R. 8617, the Hatch Act reform legislation reported by the Senate Post Office and Civil Service Committee, Senator Dick Clark will offer an amendment to strike section 7325(b) (2). Common Cause strongly supports the Clark amendment that would remove that section which, as written, would authorize the entire White House staff to campaign during business hours for the reelection of any sitting President or Vice-President, with the taxpayer paying their salaries. We believe that the Act's general prohibition against "on-duty" campaigning, applied to all other federal employees from cabinet officials on down, should also be applied to White House personnel.

We urge your support of the Clark amendment.

Sincerely,

DAVID COHEN, *President.*

WASHINGTON, D.C.

March 9, 1976.

DEAR SENATOR: During the debate on the amendments to the Hatch Act, H.R. 8617, Senator Dick Clark will offer an amendment to strike new section 7325(b) (2). I strongly urge you to support that amendment.

As written, this provision would allow more than 500 White House employees to campaign full time for the reelection of any sitting President or Vice-President, with the taxpayers picking up their salaries. I need not recount the history of the 1972 Presidential election, when the White House was virtually turned into a campaign headquarters, in order to demonstrate that public servants should be doing the public's business when being paid out of public funds. Senator Clark's amendment does no more than to insure that White House employees will follow that rule by making them abide by the same prohibition against "on duty" campaigning to which every other federal employee—from Cabinet officers on down—will be subjected under these amendments.

To permit White House employees to cam-

paign while being paid by the taxpayers would also either create enormous difficulties under the Federal election laws, or seriously undermine the notion of equality on which they are premised, or both. The reason is that providing the services of a salaried employee to a candidate would almost certainly be treated as a contribution, which would then have to be reported and would be subject to dollar limitations. In addition, it would have to be counted as an expenditure against the total allowed for the candidate. Furthermore, since the source of the salaries of those employees is the Federal Treasury, such contributions would also reduce the candidate's share of the Federal financing which Congress has already provided in Presidential elections. If by some chance, however, such services were not contributions, the most serious questions about the equality of the election laws would be raised, and such unequal treatment might jeopardize the constitutionality of the whole system of Federal financing of elections. In short, Congress has provided a direct method for financing Presidential elections, and there is no basis for including a back door provision, limited to the White House only, such as that contained in section 7325(b)(2).

The issue is quite simple and will be readily understood by every citizen. The people will see that there is only one reason a member of Congress would vote to allow the White House this special privilege, and that is that the Member wants to protect the same status when someone seeks to unseat him. When the roll is called on Senator Clark's amendment to strike section 7325(b)(2), the vote of conscience will be the same as the vote of reason.

Sincerely yours,

RALPH NADER.

Mr. CLARK. Mr. President, some people have suggested that my amendment really is not relevant to the present bill. I would point out that my amendment simply would strike language already in the legislation before us.

This does not add any language to the bill. I do not offer an amendment to put something in. The amendment simply says that we believe this language ought to be removed.

If this language is not deleted from the bill, Congress will be saying—for the first time—that White House employees are completely free to participate in political activities without restriction—while on duty or in Government facilities.

It has also been suggested that this subject would be better handled as an amendment to other legislation, perhaps the Federal Election Campaign Act. I completely agree, and that is why section 7325(b)(2) should be stricken from the bill. If we find that the general restrictions of section 7325 are unreasonable with regard to White House employees, I would be happy to join with any Member in developing legislation to deal equitably both with White House and congressional staff.

But if it is properly to be taken up elsewhere and not here, then certainly we must take it out of the present bill and deal with it elsewhere.

A final word, Mr. President: I would hope that we would have an up or down vote on this amendment. I know, certainly, that a motion to table is in order, and I think they should be used primarily for dilatory or nongermane amendments which do not go to the substance of a bill. I feel that to prevent a vote on the merits of this amendment, which is simply to strike a section of the present bill, would be to deny the Senate the opportunity to consider a fundamental change in the authority under which the President is permitted to direct staff activities at the White House. I would hope that we could have an up or down vote on this amendment.

Mr. President, I reserve the remainder of my time.

Mr. McGEE. Mr. President, the Senator from Iowa and I have discussed this proposal at length. We have, in fact, discussed it with both the ranking minority member of our committee and the Senator.

We on the committee feel very strongly that this proposed striking of the section of the bill which came over from the House does indeed inject itself directly into the election reform responsibilities within this body. We feel very strongly that it is not a judgment that our committee either is prepared to pass on or is entitled to pass on from a parliamentary point of view.

For that reason, as a mandate from the committee, I must pursue that which has been agreed upon: namely, rather than oppose the amendment here, because there is a great deal of substance to what the Senator says, I will exercise the procedural process of tabling it. That will not be as fatal for the reason that we will not have disposed of the idea; we will simply have said that this amendment does not belong with this committee or in this bill.

For that reason, when the Senator is finished with whatever time he thinks is necessary, I will propose to table the pending amendment.

Mr. FONG. Mr. President as the ranking minority member of the Post Office and Civil Service Committee I agree wholeheartedly with the chairman that this is a matter not for our committee but a matter for the Rules Committee.

I want to go further and say that in opposing this amendment I want to state that present law prohibits Federal civil service employees from taking an active part in political management or political campaigns. This is the present law. They just cannot enter into political activities being Federal employees.

This bill before us opens wide the doors to allow them to participate in political management and in political activities.

The restrictions against Federal employees have been in existence since 1907 when President Teddy Roosevelt issued the Executive order prohibiting them from taking an active part in politics.

The present law does not restrict the members of the White House in its political activities. It exempts all employees paid from the appropriation for the Office of the President and Vice President, and this rule has been in effect for a long, long time. At no time has there been any restriction upon the White House staff in the matter of politics.

There is no prohibition against the head or assistant head of an executive department or military department, and no restriction on an employee appointed by the President with the advice and consent of the Senate who determines policy to be pursued by the United States. From time immemorial, the White House staff members have not had any restrictions upon them. But this amendment proposes to place a restriction upon the political activities of the White House.

It seems to me, Mr. President, to be very peculiar that, on the one hand, the bill which is before us opens wide the door to allow every Federal employee to get into the political act, and then, by the next breath, we curtail the activity of the White House staff, when the White House staff had had unlimited privileges in this regard.

It is very difficult, Mr. President, in the case of the White House office personnel, and also in the case of the Members of the Senate and Members of Congress, to segregate the political from the official duty. I know it is very difficult in my office, for example, to say whether one of my employees, at this moment, is really doing a political act as differentiated from an official act, they are so mingled and intermingled in this type of situation. We find that type of situation also arising in the work of those in the White House. Those working closely with the President would not be able to make the fine distinction between campaigning and working on official duties.

So I would say that it is going to raise a lot of questions, and it will entrap many of the people who are working for the White House, as to whether they are doing a political act or carrying on a political function.

If we tie the hands of the White House, and we do not tie the hands of the Senator who runs for the Presidency, or the

hands of the Representative who runs for the Presidency, when they use their staffs for political purposes, we are really putting the White House at a disadvantage.

For all these reasons, Mr. President, I oppose the amendment.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that upon the disposition of the amendment by Mr. CLARK the Senator from Texas (Mr. BENTSEN) is recognized to call up an amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MCGEE. Mr. President, I wonder if I might ask the Senator from Iowa about the time factor? We are ready, whenever he gives the nod, to yield back the remainder of our time.

Mr. CLARK. I would like to respond to some of the comments that have been made. Perhaps 5 minutes will be adequate.

Mr. President, I agree with the distinguished Senator from Hawaii that authorizing the use of White House staff for political activity does not belong in this bill. That is why I am striking it. It seems to me that if we are going to say, as in fact the committee has said and as the bill said which came over from the House of Representatives, that every Federal employee will be subject to the restrictions of this act, except that we are going to create an exemption for the President and the Vice President, which no one disagrees with; and second, we are going to exempt the White House staff, more than 500 people, and all those who are detailed to the White House staff, I would agree that when they decided to exclude the President, the Vice President, and the White House staff, certainly by implication and, indeed, by law they did so under the restrictions of this legislation. That leaves them only one place—uncontrolled by the provisions that are in this act. That is why we exempted the President and the Vice President, because we felt they ought to participate in political activity, and they should. One would have to argue that in the very next section of the bill, in exactly the same way, we are exempting the White House staff, but they, too, are going to be able to operate as a President and a Vice President. We have created no such exemption for Cabinet members. We have said every Cabinet official is to be restricted exactly the same way as every other Federal employee, but we have said we will make two exceptions, the President and Vice President, and over 500 White House employees.

The fact of the matter is that the

present law is very unclear on this question. We know that the practice in the White House has been to use employees for political purposes. We also know that there is presently a court case, *Public Citizen against Simon*, in the circuit court trying to decide this very issue. So it is very unclear presently whether people who are on the White House staff, working on a President's campaign on Government time and on the Federal payroll are indeed entitled to do that legally.

I agree with the Senator from Hawaii that there are no definitions in this bill as to what political activity is, and that that would create some problems. It is going to create some problems either way. For every Federal employee who is going to be charged with engaging in political activity, that will have to be defined.

As I understand the bill, the implication is that the U.S. Civil Service Commission would define what political activity meant. That is clearly going to have to be done in any case, and it certainly would be done in the case of White House staff. But to face that problem is a much simpler thing than to say we are going to open this enormous gap and make everybody in the White House exempt from the provisions of this bill.

It is quite true that over the years the White House staff has been used in office, on duty, at taxpayers' expense, to operate political campaigns. This amendment simply says that they should not. If you believe they ought to be able to do that, if you think that is perfectly in order, to have those people working in political campaigns if they wish, then certainly one should vote "no," against this amendment. But if you believe they ought to be brought under the same kinds of restrictions, obviously as defined by the Civil Service Commission, then I think one should vote "yes" on this amendment.

Lastly, it is quite true that the same standard ought to be applied to Members of Congress whether they run for President, for Congress, or for any other office. As I said in my opening statement, obviously the Rules Committee should assume that responsibility, and as one member of the committee I certainly will. I believe it ought to apply in the same way to Members of Congress. But unfortunately such an amendment is not in order on on this particular legislation. I can assure the Senator that I will work for such legislation, and that I would be happy to work with him in this session to accomplish it.

Mr. GARY HART. Mr. President, will the Senator yield for a question?

Mr. CLARK. I do yield.

Mr. GARY HART. If the Senator's amendment passes, what would then be the state of affairs if this law is enacted with regard to political activity by White House employees?

Mr. CLARK. It would say that White House employees fall under the act. In other words, they would not be exempted from it, and they would be allowed to participate in political activities on their off hours, outside of the White House, outside of Government facilities, as would any other employee or as would any Cabinet member. The Cabinet falls under the restrictions of this act as well.

As to what constitutes political activity during the day and in the facility, that would be defined by regulation from the Civil Service Commission, just as all other Federal employees would have that definition apply to them.

Mr. GARY HART. Would there be any prohibition if the law passes with this amendment against someone leaving the White House to participate in a campaign, and then coming back?

Mr. CLARK. None whatsoever. They could go off the White House staff, certainly, participate, and come back with no restriction whatsoever insofar as I am aware of in other areas of the bill, and certainly not in this amendment.

Mr. GARY HART. I thank the Senator.

Mr. CLARK. Mr. President, I am prepared to yield back the remainder of my time.

Mr. McGEE. Mr. President, I would simply like to make it clear that the whole reason for proposing to table this amendment is that we really do not think this is the place to bring about this reform. It is present in this current bill from the House of Representatives simply to make it clear that they are not seeking to meddle in the election reform process. That is why it is here. For that reason, we will proceed to table it when it is agreeable to yield back our time.

Mr. BUCKLEY. Mr. President, I am sympathetic with the purposes of the amendment being offered by the Senator from Iowa, although there is irony in the fact that it would restrict the political activities of members of the President's staff while permitting virtually every other Federal employee to engage in substantially unlimited political activity. I believe, however, that this is not the appropriate occasion for raising the subject.

It seems to me that the subject should be reviewed by the Rules Committee with in eye toward establishing appropriate standards for congressional staffs as

well as the President's staff. I will support any practical approach to achieving this end.

Mr. CLARK. I am prepared to yield back the remainder of my time.

The PRESIDING OFFICER. Is all time yielded back?

Mr. McGEE. Is the Senator from Hawaii prepared to yield back the remainder of his time?

Mr. FONG. Yes. I yield back the remainder of my time.

The PRESIDING OFFICER. All time is yielded back.

Mr. McGEE. Mr. President, I move to table the amendment of the Senator from Iowa.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the amendment of the Senator from Iowa.

Mr. McGEE. Mr. President, I have a parliamentary inquiry: What is the parliamentary situation in regard to the yeas and nays?

The PRESIDING OFFICER. The yeas and nays were ordered on the amendment but not on the motion to table.

Mr. McGEE. Mr. President, is it in order to ask for unanimous consent that the order for the yeas and nays be conveyed to the motion to table in order to avoid the scrambling procedure again, if that is agreeable to the Senator from Iowa?

Mr. CLARK. It is.

The PRESIDING OFFICER. It is not the best procedure, but it is in order.

Mr. McGEE. Mr. President, I ask unanimous consent that the Chair so rule, if it is in order.

The PRESIDING OFFICER. Without objection, it is so ordered.

The yeas and nays are transferred to the motion to table.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Mississippi (Mr. EASTLAND), the Senator from Hawaii (Mr. INOUE), the Senator from South Dakota (Mr. MCGOVERN), the Senator from California (Mr. TUNNEY), and the Senator from South Dakota (Mr. ABOUREZK) are necessarily absent.

I further announce that the Senator from New Mexico (Mr. MONTOYA) is absent on official business.

Mr. HUGH SCOTT. I announce that the Senator from Arizona (Mr. GOLDWATER), the Senator from Michigan (Mr. GRIFFIN), the Senator from Nebraska (Mr. HRUSKA), the Senator from Maryland (Mr. MATHIAS), the Senator from Idaho (Mr. MCCLURE), the Senator from Illinois (Mr. PERCY), and

the Senator from South Carolina (Mr. THURMOND) are necessarily absent.

I further announce that the Senator from Vermont (Mr. STAFFORD) is absent due to illness in the family.

I further announce that, if present and voting the Senator from Nebraska (Mr. HRUSKA) would vote "yea."

The result was announced—yeas 52, nays 34, as follows:

[Rollcall Vote No. 64 Leg.]

YEAS—52

Baker	Ford	Pell
Bellmon	Gravel	Randolph
Bentsen	Hansen	Roth
Brock	Hartke	Scott, Hugh
Buckley	Hatfield	Scott,
Bumpers	Hathaway	William L.
Burdick	Hollings	Sparkman
Byrd, Robert C.	Humphrey	Stennis
Cannon	Johnston	Stevens
Chiles	Long	Stevenson
Church	Magnuson	Stone
Culver	McClellan	Symington
Curtis	McGee	Taft
Dole	McIntyre	Talmadge
Domenici	Morgan	Tower
Eagleton	Moss	Williams
Fannin	Nunn	Young
Fong	Pastore	

NAYS—34

Allen	Garn	Mansfield
Bartlett	Glenn	Metcalf
Bayh	Hart, Gary	Mondale
Beall	Hart, Philip A.	Muskie
Biden	Haskell	Nelson
Brooke	Helms	Packwood
Byrd,	Huddleston	Pearson
Harry F., Jr.	Jackson	Proxmire
Case	Javits	Ribicoff
Clark	Kennedy	Schweiker
Cranston	Laxalt	Weicker
Durkin	Leahy	

NOT VOTING—14

Abourezk	Inouye	Percy
Eastland	Mathias	Stafford
Goldwater	McClure	Thurmond
Griffin	McGovern	Tunney
Hruska	Montoya	

So the motion to table the amendment was agreed to.

Mr. McGEE. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. THURMOND subsequently said;

Mr. President, I regret that I was unable to be present for the preceding vote, because I was at the White House on official business and was unable to return in time to vote. If I had been able to vote I would have voted "yea."

Mr. McGEE. Mr. President, may I ask the distinguished Senator from Texas whose amendment is next, what would be a convenient time interval for him so that the Members may have an idea?

Mr. BENTSEN. The very maximum of 20 minutes, unless we want to debate this at length.

Mr. McGEE. Why not say 30 minutes, with the Senator from Texas having a guaranteed 20 minutes out of that 30?

The PRESIDING OFFICER. Is there objection? The Chair hears none. It is so ordered.

AMENDMENT NO. 1415

Mr. BENTSEN. Mr. President, I call up my amendment No. 1415 and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk proceeded to read the amendment.

Mr. BENTSEN. I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Add the following new section at the end thereof:

QUALIFICATIONS FOR APPOINTMENT TO OFFICE OF ATTORNEY GENERAL OR DEPUTY ATTORNEY GENERAL

SEC. 3. Any individual, who—

(a) whether paid or unpaid, held a position of trust and responsibility to an individual who was elected to the Office of the President while serving on the personal campaign staff of such individual, or on an organization working on such an individual's campaign, or

(b) held a statewide or national office or was employed by a State or National political party, that campaigned for an individual who was elected to the Office of President, shall be ineligible for appointment to the positions of Attorney General or Deputy Attorney General if the appointing authority is the President for whom such individual campaigned.

Mr. BENTSEN. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. BENTSEN. Mr. President, I have an amendment which I have brought before the Senate that is endorsed in principle by the American Bar Association and also was endorsed by the Watergate Special Prosecution Force in its report of October 1975. Many of us have been deeply concerned about the loss of confidence in the Department of Justice and want to see what we can do to stop the political forces at work that we have seen in that department. This amendment says that someone who has held a national office in a political party, or a State office, or is holding a State office in a political party, or has held a position, either hired or as a volunteer, in an official position in a candidate's

campaign, which candidate later becomes President of the United States, cannot be chosen as the Attorney General. What we have seen in the past is a John Mitchell become Attorney General of the United States. We have seen this ingrained into the political system. We saw it with Mitchell Palmer, Attorney General under President Wilson, who had been the President's floor leader at the 1912 Democratic Convention. We saw it with J. Howard McGrath, who became Attorney General under Harry Truman, and with Robert Kennedy, who became Attorney General under John Kennedy. We saw it with Frank Murphy, who was Attorney General under Franklin Roosevelt and served as the leader of the Roosevelt forces in the State of Michigan.

President Eisenhower's Attorney General, Herbert Brownell, had not only been active in his campaign, but had served as campaign manager for the Republican Presidential candidate, Thomas E. Dewey, in both 1944 and 1948. Several of these men, after appointment, continued to serve as political adviser to the President as well as his legal counsel.

By historical tradition, and with certain exceptions, the top Presidential appointees in the Department of Justice have been highly qualified men—competent, respected representatives of the legal profession. But where they have also been major campaign officials for the President, their appointment only contributes to a growing perception of the Department of Justice as a political instrument. With all of the highly competent members of the legal profession to choose from, it is simply not necessary to look to the ranks of the campaign staff of a Presidential candidate for Justice Department personnel.

The conduct of some of the recent officials of the Department is too fresh in the minds of many of us and the public and too deeply etched on the minds of members of the bar to be passed with a bromide that, "The next President will not let it happen."

It is time to assure the American people that law enforcement decisions will not be determined by partisan politics—either Democratic or Republican.

My pending amendment is an effort to restore that spirit by depoliticizing the Department of Justice. It would insure the Department's capacity to administer justice evenly and would restore the public's confidence, its perception of the quality and impartiality of the justice that is administered. My amendment

would statutorily prohibit the President from appointing as Attorney General or Deputy Attorney General any individual who held a paid or unpaid position in the political campaign in which he was elected, or any individual who held a statewide or national office or was employed by a State or National political party that campaigned for the individual who was elected President of the United States.

As I said earlier, Mr. President, this legislation was recommended by the Watergate Special Prosecution Force in its October 1975 report. In addition, the American Bar Association recently endorsed the concept of my amendment. We have only to recall Watergate and the Saturday Night Massacre to understand the necessity for depoliticizing the Justice Department.

I believe that Congress has a responsibility to act now to restore confidence in our system. I urge the Senate's support for my amendment.

In all candor, I would have extended it to U.S. attorneys, too, if I thought we could carry such an amendment at this time. I think this idea of reaching out, politically to select U.S. attorneys is going to continue to mar the image of the Department of Justice, and I think it is a serious mistake. But my amendment does not go to that point at this time.

The time has come to end what has become the nearly standard practice of Presidents, appointing as Attorney General one of the principal leaders of their political campaigns.

Mr. President, I urge the passage of this amendment.

The PRESIDING OFFICER. Who yields time?

Mr. TALMADGE. Will the Senator yield at that point?

Mr. BENTSEN. Yes.

Mr. TALMADGE. Looking at the Senator's amendment, paragraph (b) thereof would prohibit the appointment of an Attorney General who "held a statewide or national office or was employed by a State or national political party."

Does that mean that the attorney general of a particular State would be ineligible for appointment as Attorney General of the United States, or a Governor of a particular State?

Mr. BENTSEN. No, we are talking about someone who had worked in the campaign, if he had held a campaign position.

Mr. TALMADGE. In other words, the mere holding of a State office in and of itself would not preclude it.

Mr. BENTSEN. He would not be pre-

cluded. We are talking about holding a State political office and not an elected office. We are speaking of a party office.

Mr. TALMADGE. He would have to be connected and associated with the party of a particular candidate.

Mr. BENTSEN. That is correct.

Mr. TALMADGE. It would not preclude any official of a State government.

Mr. BENTSEN. That is not the intent.

Mr. TALMADGE. I thank the Senator.

The PRESIDING OFFICER. Who

yields time?

Mr. BEALL. Mr. President, will the

Senator yield me some time on the bill?

Mr. FONG. I yield 3 minutes.

Mr. BEALL. Mr. President, I ask unanimous consent that my remarks may be printed during the debate on the bill rather than the debate on this amendment.

The PRESIDING OFFICER. The Chair will advise the Senator that there is no time on the bill.

Mr. BEALL. Then at the conclusion of the debate. I ask unanimous consent that my remarks be printed at the conclusion of the debate on this amendment so as not to break the continuity.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BEALL. Mr. President, I spoke yesterday on the subject of this Hatch Act revision, and pointed out that, along with my senior colleague from Maryland, Senator MATHIAS, and the two Senators from Virginia, we probably have as large a contingent of Federal employees as close to us as anybody in the U.S. Senate. As a matter of fact, there are about 131,500 individuals in the State of Maryland who are employed by the Federal Government.

Although there are other States with greater concentrations of Federal employees, I think we have, as I said, the unique experience of hearing at very close range what these employees and the public want. I think the public we are hearing from is a very educated public, a public who live close enough to the Federal Government to know how it works, Mr. President, and this public is telling us in correspondence that they do not want to liberalize the provisions of the Hatch Act.

But, to be more specific, I recently sent out a questionnaire, to 600,000 households in the State of Maryland. One of the questions that I asked my constituents was:

Do you favor liberalizing the Hatch Act to permit Federal employees a greater amount of participation in partisan political activity?

Well, Mr. President, we have received approximately 80,000 of these question-

naires back. There is room on the questionnaire for more than one person to answer, and we estimate that we have gotten responses from about 120,000 to 130,000 people around the State of Maryland.

It is interesting, Mr. President, that in response to the question: "Do you favor liberalizing the Hatch Act to permit Federal employees a greater amount of participation in partisan and political activity?" across the State of Maryland the response to my questionnaire was 70 percent of those responding saying, "No," while 30 percent indicated they were for a liberalization of the Hatch Act.

I think, interestingly enough, the statewide response was also paralleled in those counties located near the District of Columbia.

Congressman GUDE, as a Representative of a high concentration of civil service employees in Montgomery County, the Eighth Congressional District from our State, continually affirmed during House debate on this subject that few of his constituents favored revision. He based this on the correspondence and communications he received from these constituents.

My questionnaire response from Montgomery County, Md., reflected the Congressman's feelings because, among the questionnaires that were returned from Montgomery County, we found that 62 percent were against liberalizing the Hatch Act and 38 percent were in favor.

The PRESIDING OFFICER. The Senator's 3 minutes have expired.

Mr. BEALL. Mr. President, will the Senator yield 2 more minutes?

Mr. FONG. I am afraid we will not be able to give the Senator more time. The Senator will have to submit his remarks for the RECORD because we are under limited time here.

Mr. BEALL. Mr. President, will the Senator yield me 2 minutes so I can complete this?

Mr. BENTSEN. I will be pleased to yield the Senator 2 additional minutes.

Mr. BEALL. The interesting fact, Mr. President, is that from Prince George's County, Md., another area close to the District of Columbia, those against revision represented 66 percent of the responses. Admittedly all of these people do not work for the Federal Government. But, Mr. President, I point out a very high percentage of them do, so I think this accurately reflects the feeling of Federal employees at least near Washington as far as revision of the Hatch Act is concerned.

I suggest to you that they continue to want the protection provided them as

Federal employees under the provisions of the Hatch Act, and that in passing and in considering this legislation today we are going too far away from the traditions established under the Hatch Act. We are moving away from impartiality in the Federal service and, I would suggest, Mr. President, we are placing in very serious jeopardy the independence of the people who serve in the Federal executive branch if we pass the bill in front of us today.

I thank the Senator from Texas.

The PRESIDING OFFICER. Who yields time?

Mr. FONG. Mr. President, I yield myself 3 minutes.

Mr. President, I rise in opposition to this amendment.

We have before us two conflicting principles. On the one hand, Congress cannot constitutionally limit the President's choice in making what he considers to be the best appointment. This is exemplified by President Monroe's statement in which he said that Congress has no right under the Constitution to impose any restraint by law on the power granted to the President so as to prevent his making a free selection of proper persons for these offices from the whole body of his fellow citizens.

Yet, on the other hand, we have this principle: It is an undeniable fact that beginning with the first Congress there have been statutory qualifications on the eligibility to appointive office and, in the opinion which was prepared by Attorney General Ackerman he says as follows:

The argument has been made that the unquestioned right of Congress to create offices implies a right to prescribe qualifications for them. This is admitted. But this right to prescribe qualifications is limited by the necessity of leaving scope for the judgment and will of the person or body in whom the Constitution vests the power of appointment.

So here, Mr. President, we have the right of Congress to set qualifications, and then we have the power of the President to appoint however he wishes, and that power cannot be curtailed.

Mr. President, as things now stand the President can appoint anyone he wishes to be the Attorney General or the Deputy Attorney General. The Senate has the right to advise and consent. Now, we here in this body have the last word as far as the advising and consenting as to whether we would confirm the appointment of the President.

With that power in our hands, why should we put such a restriction here to restrict the President from appointing the man he wants? The higher the office,

the closer he must be to the President. If the President feels he is the man for that office, why should we deny him that choice?

If we find his qualifications do not fit the office, that his character is such that he will not make a good Attorney General, then we in Congress could by our advice and consent vote to deny that appointment.

So I think, Mr. President, this is a very ill-advised amendment. It takes away from the President the power, the constitutional power, he has, and when you couple that with the fact that we here have the last word, we should not put such an impediment in the way of the President's power.

THE PRESIDING OFFICER. Who yields time?

Mr. McGEE. Mr. President, what is the time situation?

THE PRESIDING OFFICER. The Senator from Wyoming has 4 minutes remaining; the Senator from Texas has 12.

Mr. McGEE. I will make a 30-second speech, and then I will be prepared to yield back whenever the Senator from Texas is prepared to do so.

I would simply like to say, Mr. President, that we believe this measure does not belong in this bill. This committee is confined to civil service matters. We do not have jurisdiction in shaping the context—either as an election reform or as a substantive matter—in terms of the Attorney General's post. Where that belongs I am not certain. I am certain it does not belong here but probably either in the Judiciary Committee or in the Election Reform Committee. As a result, whenever the Senator has had all the time he needs, I will be compelled to move to table.

THE PRESIDING OFFICER. Who yields time?

Mr. BENTSEN. Mr. President, I thank the distinguished Senator for his counsel, his forewarning.

I ask unanimous consent that a technical amendment be accepted: On line 9, starting with paragraph (b), to answer the comment of the distinguished Senator from Alabama and the distinguished Senator from Georgia, the intent was that it be a party official, so that line would read:

(b) held a statewide or national party office . . .

The word "party" being inserted between the words "national" and "office."

THE PRESIDING OFFICER. Without objection, the amendment will be so modified. Will the Senator please send the modification to the desk.

The amendment, as modified, is as follows:

Add the following new section at the end thereof:

QUALIFICATIONS FOR APPOINTMENT TO OFFICE OF ATTORNEY GENERAL OR DEPUTY ATTORNEY GENERAL

SEC. 3. Any individual, who—

(a) whether paid or unpaid, held a position of trust and responsibility to an individual who was elected to the Office of the President while serving on the personal campaign staff of such individual, or on an organization working on such an individual's campaign, or

(b) held a statewide or national party office or was employed by a State or National political party, that campaigned for an individual who was elected to the Office of President,

shall be ineligible for appointment to the positions of Attorney General or Deputy Attorney General if the appointing authority is the President for whom such individual campaigned.

Mr. BENTSEN. Mr. President, on the question of jurisdiction, one of the major provisions of this particular piece of legislation is that it forbids the use of official authority to interfere with an election or to intimidate or coerce any individual to vote—not vote—to give or withhold a political contribution or to engage or not engage in any form of political activity.

Now, who is the official authority? Well, the highest official authority in that will be the Attorney General of the United States.

We want to be sure that that very provision is going to be enforced by a Justice Department that is impartial and that is not partisan, and that goes to the very heart of this piece of legislation. That is why I think it is very much a part of the jurisdiction of this committee, and this specific piece of legislation will try to insure that.

The question of the constitutionality here in putting a limitation on the choice was endorsed in principle by the American Bar Association, and they never raised the question of constitutionality at all.

The Watergate Task Force in their 1975 report endorsed the principle of putting this kind of guideline or limitation on the selection of the man who would hold the position of the Attorney General of the United States, or Deputy Attorney General.

Mr. President, I am prepared, if the other side is prepared, to yield back the remainder of my time.

Mr. FONG. I am prepared to yield back the time.

THE PRESIDING OFFICER (Mr. FANNIN). All time has been yielded back. The yeas and nays have been ordered,

and the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BENTSEN. Mr. President, is the motion to table before the Senate?

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Mr. BENTSEN. I move the adoption of the amendment.

Mr. FORD addressed the Chair.

Mr. FONG. Mr. President, a parliamentary inquiry.

Mr. FORD. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. FORD. The chairman, the floor leader, is away from the Chamber.

Mr. FONG. I will make the motion to table.

Mr. FORD. Mr. President, I suggest the absence of a quorum.

Mr. ALLEN. Mr. President, the rollcall is in progress.

The PRESIDING OFFICER. The clerk has not heard a response.

Mr. FONG. I move to table.

Mr. ALLEN. The Senator from Alabama voted "Aye."

The PRESIDING OFFICER. The clerk has not heard a response, the Chair will have to rule. The clerk will call the roll to establish the presence of a quorum.

The assistant legislative clerk proceeded to call the roll.

Mr. BENTSEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BENTSEN. As I understood the floor manager, and in courtesy to him, he stated he wanted to move to table. I want to protect him on that position, although it is not really in my best interests at the moment.

Mr. FONG. As a surrogate, Mr. President, I move to table.

I ask unanimous consent, Mr. President, that the request for a yea and nay vote be transferred to this motion.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll on the motion to table.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Idaho (Mr. CHURCH), the Senator from Missouri (Mr. EASTLAND), the Senator from Hawaii (Mr. INOUE), the Senator from South Dakota (Mr. MCGOVERN), and the

Senator from California (Mr. TUNNEY) are necessarily absent.

I further announce that the Senator from New Mexico (Mr. MONTOYA) is absent on official business.

Mr. GRIFFIN. I announce that the Senator from Arizona (Mr. GOLDWATER), the Senator from Nebraska (Mr. HRUSKA), the Senator from Maryland (Mr. MATHIAS), the Senator from Idaho (Mr. MCCLURE), and the Senator from Illinois (Mr. PERCY) are necessarily absent.

I further announce that the Senator from Vermont (Mr. STAFFORD) is absent due to illness in the family.

I further announce that, if present and voting, the Senator from Nebraska (Mr. HRUSKA) would vote "yea."

The result was announced—yeas 57, nays 30, as follows:

[Rollcall Vote No. 65 Leg.]

YEAS—57

Baker	Culver	Glenn
Bartlett	Curtis	Gravel
Beall	Dole	Griffin
Bellmon	Domenici	Hansen
Brock	Durkin	Hartke
Brooke	Eagleton	Haskell
Buckley	Fannin	Hatfield
Burdick	Fong	Hathaway
Cannon	Ford	Hollings
Case	Garn	Huddleston

Jackson	Moss	Stevens
Javits	Muskie	Stevenson
Kennedy	Packwood	Stone
Laxalt	Pastore	Taft
Magnuson	Pearson	Thurmond
McClellan	Pell	Tower
McGee	Proxmire	Williams
McIntyre	Scott, Hugh	Young
Metcalf	Scott,	
Mondale	William L.	

NAYS—30

Allen	Hart, Gary	Randolph
Bayh	Hart, Philip A.	Ribicoff
Bentsen	Helms	Roth
Biden	Humphrey	Schweiker
Bumpers	Johnston	Sparkman
Byrd,	Leahy	Stennis
Harry F., Jr.	Long	Symington
Byrd, Robert C.	Mansfield	Talmadge
Chiles	Morgan	Weicker
Clark	Nelson	
Cranston	Nunn	

NOT VOTING—13

Abourezk	Inouye	Percy
Church	Mathias	Stafford
Eastland	McClure	Tunney
Goldwater	McGovern	
Hruska	Montoya	

So the motion to lay on the table was agreed to.

Mr. MCGEE. Mr. President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

Mr. FORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER (Mr. HELMS). The bill is open to further

amendment.

Mr. McGEE. Mr. President, while Senators are here, may we have the yeas and nays on the Allen amendment now pending?

The PRESIDING OFFICER. Is there a sufficient second?

Mr. McGEE. Does the Senator from Ohio want a rollcall?

Mr. TAFT. Mr. President, I do not want one at this time. I may wish to modify my amendment.

Mr. McGEE. May we have the yeas and nays on the Scott amendment also?

The PRESIDING OFFICER. Is there objection to ordering the yeas and nays on the Scott amendment and the Allen amendment with one show of hands?

The Chair hears none, and it is so ordered.

Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. McGEE. Mr. President, may I ask the majority whip about the procedure here?

We have agreements worked out so that there would be an hour to be equally divided on the Allen amendment, with the understanding, at least at this point, that it is going to take less than half of this time. It is simply a protective framework; an agreement with the Senator from Ohio that there will be a half hour equally divided, if that is agreeable.

Mr. TAFT. Yes.

Mr. McGEE. And I ask Mr. WILLIAM SCOTT about his amendment.

Mr. WILLIAM L. SCOTT I do not know how long it will take. Could we have an hour? I do not think we will take that much.

Mr. McGEE. And then the Senator will yield back the remaining time.

So there will be an hour on the amendment of Senator WILLIAM L. SCOTT, to be equally divided, with probably some of that time yielded back.

Mr. ROBERT C. BYRD. Mr. President, I so ask unanimous consent.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, who has the floor?

The PRESIDING OFFICER. The Senator from West Virginia has the floor.

Mr. McGEE. I seized the floor. Anyone can have it, if they should want it.

Mr. ROBERT C. BYRD. Mr. President, I compliment the managers of the bill on both sides for the progress that has been made and compliment all Senators, for that matter. If the Senate completes action on the pending measure, which hopefully it will, and all indications are

that it will, and if the Senate also completes action on the debt limit measure today, which is a must before the Senate goes out tomorrow, I am advised by the distinguished majority leader that there will be no session tomorrow. So this would mean we may have to work a little late today.

I thank the Senator.

Mr. McGEE. Mr. President, I ask unanimous consent that Martha Weisz of Senator CRANSTON's office be granted privileges of the floor during the remainder of consideration of H.R. 8617.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. TAFT. Mr. President, I ask unanimous consent that Jane Ellsworth of my staff have privileges of the floor during consideration and voting on this bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HARRY F. BYRD, JR. Mr. President, I ask unanimous consent that Miss Joanne O'Neal of my staff have privileges of the floor during consideration and voting on this bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1419

Mr. ALLEN. Mr. President, I call up my amendment No. 1419.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Alabama (Mr. ALLEN) proposed amendment No. 1419.

The amendment is as follows:

At the end of the bill add the following new section:

SEC. . That subsection (a) of section 601 of the Legislative Reorganization Act of 1946 (2 U.S.C. 31) is amended—

(1) by striking out in paragraph (2) "Effective" and inserting in lieu thereof the following: "Except as provided in paragraph (3) of this subsection, effective"; and

(2) by adding at the end thereof the following new paragraph:

"(3) (A) If the President transmits to Congress an alternative plan with respect to a pay adjustment under section 5305(c)

(1) of title 5, United States Code, an adjustment under paragraph (2) of this subsection shall become effective as provided in such plan unless, before the end of the first period of thirty calendar days of continuous session of Congress after the date on which the alternative plan is transmitted, either House of Congress adopts a resolution (separate from any resolution under section 5305 of title 5, United States Code) disapproving the application of such alternative plan to such adjustment in the annual rates of pay for the offices referred to in paragraph (1) of this subsection. The continuity of a session is broken only by an adjournment of Congress sine die, and

the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the thirty-day period.

"(B) The provisions of sections 5305 (d) through (k) of title 5, United States Code, shall apply to a resolution of disapproval under subparagraph (A) of this paragraph."

Mr. ALLEN. Mr. President, I ask unanimous consent that the distinguished Senator from West Virginia (Mr. RANDOLPH) and the distinguished Senator from New Hampshire (Mr. DURKIN) be added as cosponsors of this amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ALLEN. Mr. President, I send to the desk a modification of the amendment and ask unanimous consent that the reading of the modification be dispensed with inasmuch as I will explain the crux of the modification.

The PRESIDING OFFICER. Without objection, it is so ordered.

The modification is as follows:

At the end of the bill add the following new section:

SEC. . That subsection (a) of section 601 of the Legislative Reorganization Act of 1946 (2 U.S.C. 31) is amended—

(1) by striking out in paragraph (2) "Effective" and inserting in lieu thereof the following: "Except as provided in paragraph (3) of this subsection, effective"; and

(2) by adding at the end thereof the following new paragraph:

"(3) (A) If the President transmits to Congress an alternative plan with respect to a pay adjustment under section 5305(c)(1) of title 5, United States Code, an adjustment under paragraph (2) of this subsection shall become effective as provided in such plan unless, before the end of the first period of thirty calendar days of continuous session of Congress after the date on which the alternative plan is transmitted, either House of Congress adopts a resolution (separate from but in addition to any resolution under section 5305 of title 5, United States Code) disapproving the application of such alternative plan to such adjustment in the annual rates of pay for the offices referred to in paragraph (1) of this subsection. The continuity of a session is broken only by an adjournment of Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the thirty-day period. If both Houses of Congress fail to pass a resolution within such thirty day period disapproving the President's plan under Section 5305 of Title 5, U.S. Code, such plan of the President shall be applicable to all employees covered by such plan, including Members of Congress, and the provisions of this paragraph requiring a separate resolution as to Members of Congress shall be inapplicable.

"(B) The provisions of section 5305 (d) through (k) of title 5, United States Code,

shall apply to a resolution of disapproval under subparagraph (A) of this paragraph."

Mr. ALLEN. Mr. President, this amendment has reference to the annual adjustment of the compensation of Federal employees.

I believe, Mr. President, that this amendment would do more for the Federal employees than this entire bill, which would seek to put the Federal employees into politics. I do not favor the bill itself but, if the bill is not passed, I would like to see this amendment passed.

As we all recall last year, Congress put the Members of Congress, House of Representatives and Senate, under the compensation provisions applicable to Federal employees. And under that system the President's Pay Council recommends an appropriate increase or adjustment in the compensation of Federal employees, and the President can allow that recommendation to stand or he can offer an alternate plan.

Congress in its wisdom put the Members of Congress under this very same plan, and as I argued in the Chamber at the time it created an instant conflict of interest on the part of Members of Congress in voting on that issue, because under this plan if the President submits an alternate plan recommending less than the Pay Council recommends, that alternate plan goes into effect as to Federal employees and as to Members of Congress, unless one House or the other inside of 30 legislative days passes a resolution overruling or striking down the President's plan.

Last year when the President's plan was allowed to stand and the lesser amount was ordered as an increase in compensation I believe the issue was 8.6 or 5 percent. The 5 percent, as recommended by the President, was allowed to stand. One of the principal reasons the President's plan was allowed to stand was that Members of Congress did not want to vote for the higher amount for themselves because there was a conflict of interest and the Members did not feel that they should vote the higher amount for themselves. As a result, the President's plan was allowed to stand. It was not stricken down.

The purpose of this amendment is to provide that there will be a separate vote on this issue as to Members of Congress. If the President submitted an alternate plan and a resolution were offered striking down that plan, there would be separate votes, first as to all Federal employees, except Members of Congress, followed then by a vote on the compensation of the Members of Congress. As a

practical result, then, even if the Pay Council recommended one figure and one house of Congress struck down the President's alternate plan, so that the recommendation of the Pay Council would go into effect as to Federal employees, that would not go into effect as to Members of Congress unless on a separate vote one house or the other of Congress would strike down the President's recommendation.

That would remove the conflict of interest on the first vote. I feel that it would allow this issue to be determined on its merits, as to whether the pay council's recommendation would apply or the President's alternate plan would apply. There would be no conflict of interest, because members could vote for the higher recommendation of the pay council, or they could vote for the lower recommendation of the President, without being involved in a conflict of interest. Then there would be a separate vote for themselves.

As a result, we could find the Federal employees generally receiving the higher amount and Congress, or one House of Congress, in its wisdom, saying, "No, we're going to stick by the President's plan." That is all the amendment would do.

I believe this is something we should do for the Federal employees, to remove this conflict of interest. It would mean more in the long run to the Federal employees than this whole issue of putting them back into politics.

I might say, while we are talking about the bill, that I was very interested in the remarks of the distinguished junior Senator from Maryland (Mr. BEALL) who, together with the Senators from Virginia, doubtless represents more Federal employees than possibly any other Senators, certainly any other Senators of States of that size. He says that he has found only a small percentage of Federal employees who want to be put back into politics. I think we are doing a disservice to the Federal employees by putting them back into politics.

As to the Hatch Act and the general thrust of it, it is more or less a quid pro quo equation that there would be job security for Federal employees, but in return for that, they would give up political activity.

So what we are doing here, if this bill becomes law, is knocking out one part of the equation, so that there still is job security, and that is fine. I approve of that. I do not think we should have the spoils system. At the same time, however, I do not think we should knock out the other half of the equation—that is, knock out the noninvolvement in politics.

So this is not an unmixed blessing for the Federal employees, to be allowed to go into politics. Surely, the present Hatch Act does put a curb on activities of Federal employees; but it also protects Federal employees from unnecessary political harassment.

I believe that the Federal employees benefit by the present system, and I do not think it is right to force them into politics and subject them to harassment by other Federal officials who are turned loose in the political arena. So I think we are doing a disservice to Federal employees.

A large percentage of the mail I have received on this subject from Federal employees has been in opposition to any change.

The distinguished floor manager of the bill refers to this as bringing the Hatch Act up to date. I do not believe it needs to be brought up to date, if it means turning 3 million Federal employees out on the political hustings. I believe we are going to protect the Federal employees best if we leave them protected from political activity. I believe that is the way to protect the Federal employees, while the bill is under consideration. If it should happen to pass and escape a veto, which I am skeptical of, and in case the veto should be overridden, and I am skeptical of that, I feel that we also should change the procedure on the adjustment of compensation, so that they would have a fair chance and a fair break on the adjustment of their compensation.

Mr. FONG. Mr. President, will the Senator yield for a question?

Mr. ALLEN. I yield.

Mr. FONG. If the President says, "We will give them 5 percent." and the pay board says, "We should give them 8 percent," and we do nothing, there is no vote. Is that correct?

Mr. ALLEN. There is no vote on either issue.

Mr. FONG. But if we say that we disagree with the President, then we will have to vote on that question, and that means that the 8 percent will go into effect?

Mr. ALLEN. Eight percent would go into effect as to Federal employees. Then there would be a separate vote as to Members of Congress.

Mr. FONG. To see whether we keep the 8 percent or 5 percent?

Mr. ALLEN. That is correct. So we could have a situation in which the Federal employees would receive the increase and the Members of Congress would not. But, conversely, we could not have the other situation, in which Members of Congress would receive the increase and the Federal employees would not.

Mr. FONG. I thank the Senator.

Mr. TAFT. Mr. President, will the Senator yield?

Mr. ALLEN. I yield.

Mr. TAFT. Mr. President, I find myself in agreement with the distinguished Senator from Alabama, both as to his amendment and as to his comments on the bill.

For a couple of years, I have had proposed legislation pending, S. 908, which would take Congress out from under the commission procedure entirely, which I think would be a better remedy even than the proposed amendment. At least, the amendment would go halfway in the right direction of eliminating the conflict of interest involved. What it would not do, however, in my opinion, would be to put down clearly enough what I think is the responsibility of Congress to set its own salaries and tell the public they think they are worth that amount.

The Senator has a good point. I hope that at some time we will have hearings on the proposed legislation that I mentioned previously to the distinguished chairman on the floor a number of times, to take us out from under this commission situation entirely, to see if we can muster enough support and receive enough understanding on the part of Members and the public to face up to this matter in the way we should.

Mr. ALLEN. I agree entirely with the distinguished Senator from Ohio. It is only half a loaf. I would like to have the Members of Congress out from under the salary adjustment provision for Federal employees. This is not an effort to do that. I know that at this time we could not pass that proposal. At the appropriate time, I will be happy to join the Senator from Ohio in attempting to take the Members of Congress out from under the Commission.

Mr. McGEE. Mr. President, will the Senator yield?

Mr. ALLEN. I yield.

Mr. McGEE. I do not want to interfere with the Senator from Alabama. I am supporting his amendment but not the ad hoc remarks he has been making about the bill. I think his amendment has substantive quality. However, I believe our language may be causing some confusion.

The committee, in the refinement of the pay mechanism, distinguished between cost-of-living adjustments and salary adjustments. We already have a salary adjustment process. In the past, these adjustments have occurred at irregular intervals. The corrective legislation that we put in after the salary adjustment approach failed, was intended to tie the process to the cost of living.

We think it is important that both of these adjustments not be addressed in the same context. They are two different things. That is why I believe the Senator's amendment makes real input regarding the refinement of the cost-of-living mechanism and yet it also keeps Congress responsible. For that reason I am going to recommend that his amendment be supported.

At the appropriate time, I should like to submit the amending language which simply makes it clear that our action applies to Congress as well as legislative

employees and others directly responsible to Congress. There should be no distinction, in order that employees do not end up making more money than Senators.

Mr. ALLEN. I have seen the perfecting amendment, and I agree.

Mr. McGEE. Would it be all right if I were to submit it now?

Mr. ALLEN. Yes.

Mr. McGEE. Mr. President, I send to the desk the amending language, in order to clarify the point that is already in the Senator's amendment. I can explain this, in order to help the clerks of the Senate figure out what I mean.

All this does is list the exemptions under the other procedure, so as to say that no employee of this body or anyone appointed by this body can receive higher salaries than are received by Members of this body. That is all this amendment does.

The point is that even though other salaries in the Federal Government may go higher under the other formula which exists, this could not happen within the context of the two legislative bodies. The object is simply to make the language consistent with the intent. We do not want any ambiguity.

Mr. ALLEN. I accept that.

The PRESIDING OFFICER. Is the Senator submitting this as a modification?

Mr. McGEE. It is a modification to the Senator's amendment. He is willing to accept it.

Mr. ALLEN. Yes, I shall modify my amendment to include the amendment of the distinguished Senator from Wyoming.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment was modified as follows:

On page 1, line 1, strike out "That subsection" and insert in lieu thereof the following: "(a) Subsection".

On page 2, immediately after line 20, insert the following:

(b) Notwithstanding any other provision of law, the rate of pay of—

(1) any officer or employee of the Senate or the House of Representatives or of the Congress,

(2) the Comptroller General of the United States, the Deputy Comptroller General of the United States, the General Counsel of the United States General Accounting Office, and any other officer or employee of the United States General Accounting Office,

(3) the Librarian of Congress, the Deputy Librarian of Congress, and any other officer or employee of the Library of Congress,

(4) the Architect of the Capitol, the Assistant Architect of the Capitol, and any other officer or employee of the Office of Architect of the Capitol,

(5) the Public Printer, the Deputy Public Printer, and any other officer or employee of the Government Printing Office,

(6) the Director of the Congressional Budget Office, the Deputy Director of the Congressional Budget Office, and any other officer or employee of the Congressional Budget Office,

(7) the Director of the Office of Technology Assessment and any other officer or employee of the Office of Technology Assessment, and

(8) any officer and employee of the Botanic Garden, shall not exceed the rate of pay for a Member of Congress.

Mr. ALLEN. Mr. President, I have already requested that the distinguished Senator from New Hampshire (Mr. DURKIN) be added as a cosponsor. I also ask unanimous consent that the distinguished Senator from North Carolina (Mr. HELMS) be added as a cosponsor. The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McGEE. May I say the Senator has strange bedfellows in support of his amendment. That attests to its quality.

Mr. ALLEN. I do not know that the distinguished Senator from New Hampshire would like me to recall his first vote in the Senate. I remember it quite well because I took quite an interest in this New Hampshire matter and did the distinguished Senator from New Hampshire a great favor here, some months ago, when I helped send that election back to the people of New Hampshire to decide that issue. They decided it in no uncertain terms.

I remember very distinctly the distinguished Senator's first vote in the Senate. He voted to sustain the President's alternate plan. I believe he would like to have voted to give the Federal employees the full 8.6 percent, but he did not want to vote for the maximum increase for himself. So in a very statesmanlike fashion, he voted in favor of the President's plan—that is, against overruling. I hope that the distinguished Senator from New Hampshire will take the type of vote that he cast on that issue, and apply that same reasoning to other votes that he is going to cast in

the Senate during his 6-year term—or much longer, for that matter.

Mr. TAFT. Will the distinguished Senator from Wyoming yield to me a couple of minutes' time?

Mr. McGEE. I shall be glad to yield a couple of minutes to the distinguished Senator, on either side.

Mr. TAFT. I thank the distinguished Senator. It is not on either side.

I merely wish to say with regard to the remarks of the distinguished Senator from Wyoming about the cost of living aspect of the problem that I fully understand that. I wish to say that insofar as salary matters are concerned, particularly our own salaries, if my constituents are any gauge of a course that we ought to follow, they directly tie pretty much what does happen to the cost of living with what we ought to do about setting our own salaries. When the cost of living goes up, some of them feel even more strongly that we should not be raising our own salaries, and the case would be on the other side.

Mr. ALLEN, Mr. President, I yield back the remainder of my time.

Mr. McGEE. We have nothing more to add here.

Mr. FONG. I yield back my time.

Mr. McGEE. I yield back my time, so we may proceed to vote on the Senator's amendment.

May I say that a vote of "aye" accepts the adjustment in the cost of living formula so that the Senate, in the event of disagreement with the President's recommendation, would then be required to cast two separate votes: one increasing the percentage for Federal employees; the other to record the vote on whether they would increase it for Members of Congress as well. I intend to vote "aye" on this amendment, as does my colleague. Thus, the committee is recording its vote in favor of the amendment.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment of the Senator from Alabama as modified. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Idaho (Mr. CHURCH), the Senator from California (Mr. CRANSTON), the Senator from Mississippi (Mr. EASTLAND), the Senator from Alaska (Mr. GRAVEL), the Senator from Hawaii (Mr. INOUE), the Senator from South Dakota (Mr. McGOVERN), the Senator from Connecticut (Mr. RIBICOFF), the Senator from Missouri

(Mr. SYMINGTON), and the Senator from California (Mr. TUNNEY) are necessarily absent.

I further announce that the Senator from New Mexico (Mr. MONTOYA) is absent on official business.

I further announce that, if present and voting, the Senator from California (Mr. CRANSTON) would vote "yea".

I further announce that, if present and voting the Senator from Connecticut (Mr. RIBICOFF) would vote "nay".

Mr. GRIFFIN. I announce that the Senator from Arizona (Mr. GOLDWATER), the Senator from Nebraska (Mr. HRUSKA), the Senator from Idaho (Mr. MCCLURE), the Senator from Illinois (Mr. PERCY), the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

I further announce that the Senator from Vermont (Mr. STAFFORD) is absent due to illness in the family.

I further announce that, if present and voting, the Senator from Arizona (Mr. GOLDWATER) would vote "yea."

The result was announced—yeas 69, nays 14, as follows:

[Rollcall Vote No. 66 Leg.]

YEAS—69

Allen	Ford	Mondale
Baker	Garn	Moss
Bartlett	Glenn	Muskie
Beall	Griffin	Nelson
Bellmon	Hansen	Nunn
Bentsen	Hart, Gary	Pastore
Biden	Hart, Philip A.	Pearson
Brock	Hartke	Pell
Brooke	Haskell	Proxmire
Bumpers	Helms	Randolph
Burdick	Hollings	Roth
Byrd	Huddleston	Schweiker
Harry F., Jr.	Humphrey	Scott, Hugh
Byrd, Robert C.	Jackson	Sparkman
Cannon	Johnston	Stevenson
Chiles	Kennedy	Stone
Culver	Laxalt	Taft
Curtis	Leahy	Talmadge
Dole	Long	Thurmond
Domenici	Magnuson	Tower
Durkin	Mansfield	Weicker
Eagleton	McClellan	Williams
Fannin	McGee	
Fong	Metcalf	

NAYS—14

Bayh	Hathaway	Packwood
Buckley	Javits	Scott,
Case	Mathias	William L.
Clark	McIntyre	Stennis
Hatfield	Morgan	Stevens

NOT VOTING—17

Abourezk	Hruska	Ribicoff
Church	Inouye	Stafford
Cranston	McClure	Symington
Eastland	McGovern	Tunney
Goldwater	Montoya	Young
Gravel	Percy	

So Mr. ALLEN's amendment (No. 1419), as modified, was agreed to.

Mr. McGEE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. FONG. I move to lay that on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. McGEE. Mr. President, if I may have 1 minute before we turn to the amendment of the Senator from Ohio, I inadvertently violated an agreement because I was busy doing something else at the time.

We are accepting an amendment by the Senator from Florida. It is a language clarification amendment. We are willing to accept that.

Mr. STONE. Mr. President, I call up my amendment, which is at the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Florida (Mr. STONE) proposes an amendment.

The amendment is as follows:

On page 19, beginning on line 18, strike out all through page 20, line 7, and insert in lieu thereof the following:

"§ 7329. Penalties

"(a) Subject to and in accordance with section 7328 of this title, an employee who is found to have violated any provision of—

"(1) section 7323 of this title shall, upon a final order of the Commission, be suspended without pay from such employee's position for a period not less than ninety days, or shall be permanently removed in which event that employee may not thereafter hold any position (other than an elected position) as an employee (as defined in section 7322(1) of this title):

"(2) section 7324 or 7325 of this title shall, upon a final order of the Commission, be—

"(A) removed from such employee's position, in which event that employee may not thereafter hold any position (other than an elected position) as an employee (as defined in section 7322(1) of this title) for such period as the Commission may prescribe;

"(B) suspended without pay from such employee's position for such period as the Commission may prescribe; or

"(C) disciplined in such other manner as the Commission shall deem appropriate."

Mr. STONE. Mr. President, the Federal Employees' Political Activities Act, H.R. 8617, seeks to give Federal employees the fullest possible right to participate in the American political process. It attempts to strike a fairer balance between the individual rights of 3 million citizens in Government service and the need of the Federal Government to have impartial, nonpartisan administration of its programs.

While this bill goes a long way toward achieving its stated goals, I believe that there is one serious flaw in it which needs

to be remedied. That flaw is the lack of any mandatory penalty for the use of official authority to affect the result of

an election or for the intimidation of co-workers to get them involved in partisan political activities. As the bill now reads, the Civil Service Commission has complete discretion as to penalties and need not levy any penalty at all.

There are certain prohibitions in the bill, such as those banning political activity while on duty, that could be violated inadvertently. For violations of these prohibitions; which make up sections 7324 and 7325 of the bill, the Board should have discretion to weigh the seriousness and the willfulness of the violation before deciding on a penalty.

However, section 7323 prohibits activities which by their very nature are willful. Intimidating employees to engage in partisan political activity, using official authority to affect the outcome of an election—these are activities which if allowed to exist would undermine the integrity and impartiality of all Government programs. These are activities which must be dealt with harshly. If we do not demand that persons found guilty of these actions leave their Federal employment for at least a minimum amount of time, then we invite a return to the types of misdeeds that originally led to the adoption of the Hatch Act.

Everyone who supports this bill has emphasized the safeguards it contains against coercion of employees by superiors and coworkers who seek to have them participate in partisan political activity. Unless employees know that those who would seek to pressure them face certain penalties, the safeguards are meaningless.

Mr. President, for these reasons I am submitting an amendment to H.R. 8617 which would require the Commission to suspend without pay for at least 90 days any employee found guilty of violating section 7323. The Commission retains its discretion to choose from a wider range of sanctions when it finds a violation of the other prohibitions contained in the bill.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Florida.

The amendment, as modified, was agreed to.

Mr. STONE. I thank the Chair.

Mr. McGEE. Mr. President, may I ask what the status is of the pending proposal? Is there an agreement on time?

The PRESIDING OFFICER. Yes. The amendment of the Senator from Virginia has a 1-hour time limitation, evenly divided.

Mr. WILLIAM L. SCOTT. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. WILLIAM L. SCOTT. Is the time controlled on both sides of the aisle?

Mr. TAFT. Mr. President, may I say that I have no reason not to allow the Senator from Virginia to go ahead.

The PRESIDING OFFICER (Mr. GARY HART). The Chair recognizes the Senator from Virginia.

AMENDMENT NO. 1432

Mr. WILLIAM L. SCOTT. Mr. President, I call up my amendment No. 1432 and ask for its consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. WILLIAM L. SCOTT. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with and I will explain it to the Senators.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

That (a) section 7326 of title 5, United States Code, is amended to read as follows:

"§ 7326. Political activities permitted

"(a) The provisions of section 7324(a) (2) of this title shall not prohibit an employee or individual from—

"(1) holding or being a candidate for, any elective office, if such office is—

"(A) an elective office of a county, city, or other local political subdivision of a State, or

"(B) an elective office of a county or city affiliated organization, or other local affiliated organization, of any political party;

"(2) engaging in political activity in which such employee actively participates in any campaign activity on behalf of, or in opposition to, any political party or any candidate for elective office, if such activity is in connection with any campaign for—

"(A) an elective office of a county, city, or other local political subdivision of a State, or

"(B) an elective office of a county or city affiliated organization, or other local affiliated organization, of any political party; or

"(3) engaging in political activity in connection with a question which is not specifically identified with a National or State political party or political party of a territory or possession of the United States.

"(b) For the purpose of this section, questions relating to constitutional amendments, referendums, approval of municipal ordinances, and other of a similar character, are deemed not specifically identified with a National or State political party or political party or territory or possession of the United States."

(b) Section 7327 of such title is repealed.

(c) The table of sections for subchapter III of chapter 73 of such title is amended by striking out the items relating to sections 7326 and 7327 and inserting in lieu thereof: "7326. Political activities permitted."

Amend the title so as to read: "An Act to provide for the voluntary participation of certain Federal employees in the political processes of local political subdivisions of a State and of local affiliated organizations of any political party, and for other purposes."

Mr. WILLIAM L. SCOTT. Mr. President, my amendment is in the nature of a substitute, and it would strike out all after the enacting clause of the bill before us and would add a new section, the substance of which would permit Federal employees covered by the Hatch Act to participate as partisans in political campaigns or to be candidates for office at the local level—the local level only.

They could be candidates for city council, for mayor of their community, they could be candidates for the board of supervisors or the governing body of a county, whatever it might be called in the individual States.

But they could not participate in partisan politics at the State or Federal level. They could participate, as they can now, in questions relating to constitutional amendments, referendums, approval of municipal orders, and matters of a similar nature. The same language is in my amendment as in existing law.

At the present time, as I understand it, Government employees living within the Washington area, in Maryland or Virginia, can participate at the local level as nonpartisans but not as partisans. This has resulted in some instances, in Arlington County, for example, in a non-partisan third party. I believe that Government employees should be permitted to participate at the local level as Democrats or as Republicans. I do not feel that they should have to form a third party in order to participate in local elections.

Under present law, where there is a majority of the voters who are Federal employees, they can participate. This amendment would make it nationwide that Government employees could participate in local elections as candidates or as political managers, in any way they wanted to.

I might say, Mr. President, I believe this is the desire of the Government employees. I believe they want the protection of the Hatch Act, but I believe they would like to participate at the local level.

Having said that, I would support it by a poll that I took of the people living within the Eighth District of Virginia when I represented that district in the

House of Representatives. This was in 1969. I asked, "Should the Hatch Act be amended to permit Federal employees to participate in partisan politics?"

Sixty-four percent indicated they favored the participation of Federal employees in partisan politics at the local level. At the State level, however, the percentage was 45 percent, less than half. At the Federal level it was only 31 percent.

I believe this measure, as it came before the Senate, is taking away some of the protection that is offered the Government employee. I cannot see how they can participate at the Federal level in partisan politics and still have the protection that they would like to have as Government employees from political reprisal.

I call the attention of the Senate to page 40 of the report. It quotes Joseph Young, a long-time government columnist for the Washington Star. He makes this observation:

Federal and postal employee union leaders are all in favor of overhauling the law restricting the political activities of government workers, but it's doubtful that most employees are.

The unions favor overhaul because it would increase their clout with Congress and the political party in power in the White House.

But it would mean the end of the merit system as we know it today.

The attacks on the merit system that occurred during the Nixon administration would be mere child's play compared to what would happen if the Hatch Act were radically changed.

I would also call the attention of the Senate to the comments made by the president of the National Federation of Federal Employees on page 228 of the report of hearings on the measure before us. The president of the union, I believe the second largest group of government employees, said:

We are the only union that ran a survey on the Hatch Act concept and determined what our people really want. I say the only union that truly ran a population study. We sent out 100,000 questionnaires; we got an 89-percent reply—and this is really interesting, because over 85 percent said: leave it alone. Don't do anything with it; don't change the Hatch Act.

Ten percent said that we needed modification to the Hatch Act. And the rest said we needed complete revision.

Now, with that kind of a feel as to what the population—and a large population, and I have heard of no other survey performed by either side of the Hill as to what Government employees want. I have heard of no other type of study performed by any other union in order to get a true feeling of what the Government employee really wants.

I also gave you the complete returns on that particular survey on previous occasions at hearings. We felt that this subject was im-

portant enough for us to get the feel of the people—what do they really want? Not what I want, as a leader of the largest independent union.

We speak for approximately 200,000 people; we are the second largest union in the Federal sector.

It goes on, Mr. President, but I will not continue to read it.

This would permit the Federal employees to participate at the level that most vitally affects them and their families. It seems to me that they could participate at the local level in matters that would have a bearing on their schools, that would have a bearing on the police protection, the fire protection, on zoning, on hospitals, on utilities, and such matters as these. It just seems to me that it is a reasonable approach to let the Federal employees participate in local elections but to continue the protection that they now have under the Hatch Act and not put them in competition at the Federal level.

It would be very difficult, and I believe against human nature, for people who might be elected to Congress not to have a degree of animosity against someone who was working against them at the polls, someone who might be a candidate running for the same office as they were running for, or somehow managing a campaign on behalf of their opposition.

We can attempt to put safeguards in the bill, but I believe they would be ineffective.

I believe my amendment would preserve the virtues of the Hatch Act while eliminating its shortcomings.

In my opinion, Mr. President, we need to preserve the merit system. I would not like for us to go back to the spoils system. That would be a step backward, as our distinguished Senator from Hawaii said when the bill was first taken up.

This amendment would provide an outlet for the employees. I believe it is best for the Government to adopt this amendment. I believe it is best for the Congress.

Mr. President, I reserve the remainder of my time.

Mr. FONG. Mr. President, I will support the amendment of the distinguished Senator from Virginia. I believe it is a very good amendment.

Mr. WILLIAM L. SCOTT. I appreciate the comments of the Senator.

Mr. McGEE. Mr. President, I yield myself 30 seconds to say, which comes as no surprise to my colleague from Virginia, that speaking in behalf of the majority of the committee we will oppose the amendment since it functions as a substitute for all the business we have been transacting the last couple of days.

We do, however, appreciate the point he has made. I am willing to yield back the remainder of my time.

Mr. WILLIAM L. SCOTT. Mr. President, I believe this is in accord with the views and the recommendations of the commission which was appointed in 1967 and which held very extensive hearings on the overall revision of the Hatch Act. So it is not something that I have just grabbed out of the air which has not been thoroughly discussed.

If the Senator is agreeable, I am agreeable to yielding back the remainder of my time.

Mr. McGEE. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment (No. 1432) of the Senator from Virginia (Mr. WILLIAM L. SCOTT). On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Idaho (Mr. CHURCH), the Senator from California (Mr. CRANSTON), the Senator from Mississippi (Mr. EASTLAND), the Senator from Alaska (Mr. GRAVEL), the Senator from Hawaii (Mr. INOUE), the Senator from South Dakota (Mr. McGOVERN), the Senator from Connecticut (Mr. RIBICOFF), and the Senator from California (Mr. TUNNEY) are necessarily absent.

I further announce that the Senator from New Mexico (Mr. MONTOYA) is absent on official business.

Mr. GRIFFIN. I announce that the Senator from Arizona (Mr. GOLDWATER), the Senator from Nebraska (Mr. HRUSKA), the Senator from Idaho (Mr. MCCLURE) and the Senator from Illinois (Mr. PERCY) are necessarily absent.

I further announce that the Senator from Vermont (Mr. STAFFORD) is absent due to illness in the family.

I further announce that, if present and voting, the Senator from Nebraska (Mr. HRUSKA) would vote "yea."

The result was announced—yeas 28, nays 57, as follows:

[Rollcall Vote No. 67 Leg.]

YEAS—28

Baker	Domenici	Pearson
Bartlett	Fannin	Roth
Beall	Fong	Scott, Hugh
Bellmon	Garn	Scott,
Brock	Griffin	William L.
Buckley	Hansen	Stennis
Byrd,	Helms	Taft
Harry F., Jr.	Laxalt	Thurmond
Curtis	Mathias	Tower
Dole	Packwood	Young

NAYS—57

Allen	Bumpers	Chiles
Bayh	Burdick	Clark
Bentsen	Byrd, Robert C.	Culver
Biden	Cannon	Durkin
Brooke	Case	Eagleton
Ford	Kennedy	Nunn
Glenn	Leahy	Pastore
Hart, Gary	Long	Pell
Hart, Philip A.	Magnuson	Proxmire
Hartke	Mansfield	Randolph
Haskell	McClellan	Schweiker
Hatfield	McGee	Sparkman
Hathaway	McIntyre	Stevens
Hollings	Metcalfe	Stevenson
Huddleston	Mondale	Stone
Humphrey	Morgan	Symington
Jackson	Moss	Talmadge
Javits	Muskie	Weicker
Johnston	Nelson	Williams

NOT VOTING—15

Abourezk	Gravel	Montoya
Church	Hruska	Percy
Cranston	Inouye	Ribicoff
Eastland	McClure	Stafford
Goldwater	McGovern	Tunney

So Mr. WILLIAM L. SCOTT's amendment (No. 1432) was rejected.

Mr. MCGEE. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. FONG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1439, AS MODIFIED

Mr. TAFT. Mr. President, I send an amendment, as modified, to the desk.

Mr. CLARK. Mr. President, will the Senator from Ohio yield to me for the purpose of offering an amendment that will take about 20 seconds?

Mr. TAFT. I will be glad to do so as soon as the amendment is read.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Ohio (Mr. TAFT) proposes an amendment No. 1439, as modified.

The amendment, as modified, is as follows:

On page 1, between lines 2 and 3, insert the following:

"TITLE I—POLITICAL ACTIVITIES OF
FEDERAL EMPLOYEES

On page 1, line 3, strike out "That this Act" and insert in lieu thereof "Sec. 101. This title".

On page 1, line 5, strike out "SEC. 2." and insert in lieu thereof "Sec. 102".

On page 25, immediately after line 10, insert the following:

"TITLE II—RESTRICTION ON PAY INCREASES FOR MEMBERS OF CONGRESS

"Sec. 201. (a) Section 601(a) of the Legislative Reorganization Act of 1946 (2 U.S.C. 31) is amended by adding at the end thereof the following new paragraph:

"(3) Notwithstanding paragraphs (1) and (2) of this subsection, section 225 of the

Federal Salary Act of 1967, or any other provision of law, an individual referred to in paragraph (1) may not have his rate of pay increased—

"(A) by or under any law passed during a Congress;

"(B) under paragraph (2) of this section (except to the extent subparagraph (A) of this paragraph applies), if any alternative plan transmitted by the President under section 5305(c)(1) of title 5, United States Code, does not take effect by reason of the adoption during a Congress of a resolution disapproving such plan; or

"(C) under recommendations taking effect under section 225 of the Federal Salary Act of 1967 which were transmitted by the President during a Congress;

unless such increase is to take effect not earlier than the first day of the next Congress. For purposes of the preceding sentence,

the period, during any even-numbered year of any Congress, which begins on the Tuesday following the first Monday of November of such year and which ends at noon on the following January 3 shall be considered as occurring during the first session of the following Congress."

Mr. TAFT. Mr. President, I am glad to yield to the distinguished Senator from Iowa.

Mr. CLARK. Mr. President, I ask unanimous consent that my amendment be in order at this point.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. CLARK. Mr. President, I send to the desk an unprinted amendment.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Iowa (Mr. CLARK) proposes an amendment:

On page 7, after line 24, insert the following:

"(c) Nothing in this section shall be construed to authorize an individual designated in subsection (b)(2) to engage in political activity."

Mr. MCGEE. Mr. President, will the Senator yield?

Mr. CLARK. I yield.

Mr. MCGEE. The Senator has cleared this language on both sides of the aisle, and we want to make clear our interpretation of it, which is that it does not change in any way the existing law. It is simply designed to make sure that there is no overreaction in any direction.

Mr. CLARK. That is right.

Mr. FONG. And nothing in this proposal gives them anything additional or takes away any privileges.

Mr. CLARK. That is correct.

Mr. President, in light of the defeat of the amendment I offered previously, I offer this amendment in the hope that it

would help to clarify the committee's intent in section 7325(b) (2).

As I understand it, the position of the committee is that section 7325(b) (2) does not represent congressional authorization for participation in partisan political activities by White House employees, but simply is an exemption for those employees from the general restrictions set forth in section 7325.

This amendment would simply codify the committee's position by adding a new subsection (c) which would read:

Nothing in this section shall be construed to authorize an individual designated in subsection (b) (2) to engage in political activity.

Again, Mr. President, this amendment simply would spell out the position of the committee as it has been stated here today, and I urge its adoption.

Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. TAFT. Mr. President, I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. TAFT. Mr. President, for the benefit of Senators, I state that I do not expect to talk more than a very few minutes on this matter.

At the outset, I ask unanimous consent that the names of Senator WEICKER, Senator METCALF, Senator NUNN, and Senator DURKIN be added as cosponsors of the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. TAFT. Mr. President, this amendment would do only one very simple thing. It provides that the general election must fall between the time when a congressional pay increase is voted upon and the time when it goes into effect.

This matter came to my attention sometime ago, and I have introduced a bill which would have the same general effect. It is modeled on what is the practice in many States of the Union, either constitutionally or statutorily. Some 25 States have provisions which prevent a legislative body from voting for a change in its compensation during the particular time for which the members have been elected.

In other words, for example, in Ohio, in our constitution, for many years we have prohibited State legislators from receiving pay increases in the same session in which they are voted. Several other States have comparable provisions in their laws.

This bill would eliminate a serious procedural problem and a conflict of interest, because no Member of Congress could receive a pay raise during the Congress in which the pay raise was enacted.

This proposal does not address the merits of any specific increase, just the timing of future increases.

To those who are looking at amendment No. 1439, as originally printed, I say that I have deleted the last five lines entirely from page 3 of the amendment which was in the original bill, introduced at an earlier time.

This would be prospective only, in this aspect. It would not go back to have any application to increases in cost of living or other increases that have been voted for Congress in the past.

I point out that this seems to me to be an ideal time to take this step. It does not seem likely, in an election year, that there will be any further consideration of congressional pay increases in this session. It would mean that, if we wanted to take up the question in this session of what should be done with regard to salaries of Senators and Representatives in the next session, we could do so.

It has the advantage, I think, of eliminating to a great extent the conflict of interest than otherwise exists. It means that, after having voted an increase in salaries for the Senate or for the House or both, there then would be an intervening election in which the people could ratify the decision Congress had made. If the people did not like it, they could elect somebody else to Congress and make a further change.

I believe the suggestion has a good deal of merit, and I hope that the Senate will see fit to adopt it. I believe it would be a welcome change, accepted by the people generally, who have been quite critical of the attitude of Congress in the past with regard to its own salaries. Yet, it would provide a mechanism by which the people would be brought into the process in a way they are not brought into it today.

I do admit, of course, that with regard to a Senator with a 6-year term, as compared to a House Member with a 2-year term, we have a little different situation. It would mean that after a 2-year period in Congress or after that particular session of Congress, even though a Member had been elected for that period, he would start getting a higher salary even though there had not been an intervening election for that particular Senator. There would be a different Senate, anyway. One-third of the Senators would have to stand for election.

Mr. President, I have asked for the

yeas and nays on the amendment, and I have nothing further to say.

Mr. McGEE. Mr. President, I am prepared to yield back the remainder of my time. I will move to table the amendment because of the matters that the Senator and I have discussed—that is, there is a rather serious matter in the salary mechanism that we have agreed we must deal with in reexamining the whole structure, as we have been requested to do at the White House level. We have every intention, when we get out of the time bind we are in that that will be undertaken.

Mr. FONG. Mr. President, this would abolish or take away what we have voted on in the last session with respect to the cost-of-living allowance. We went through a very long debate on that question, and now, with only about 5 minutes here, we are asked to do away with that. I think this amendment has no place in this bill.

Mr. TAFT. Mr. President, with respect to the remarks of the distinguished Senator from Hawaii, I wish to make it clear that this legislation in bill form, with a considerable number of sponsors—and the bill introduced in the House has been pending for some time—is available for hearings before the committee.

I hope that in the consideration of the committee, if the amendment is not agreed to at this time, this proposal will be considered. As I say, I think it would be most welcome to the public to see Congress take a position of this kind.

Mr. WEICKER. Mr. President, I rise to support the amendments, offered by Senators TAFT and ALLEN, designed to clarify the issue of congressional pay raises.

The amendment offered by the Senator from Ohio (Mr. TAFT) is identical to the legislation we introduced on September 24, 1975. It would require a general election to be held between the time any congressional pay increase is voted and the date on which it takes effect.

The adoption of this amendment would make our process of voting pay hikes more responsible and less self-serving. Having Members of Congress line their own pockets by voting themselves immediate pay raises is one more reason

why the American people are losing confidence in their elected officials.

I would like to commend the Senator from Alabama (Mr. ALLEN) for his effort to begin to disassociate Members of Congress and Federal employees in determining the pay raise issue.

Mr. President, Members of Congress should not now, and should never have been linked to other Federal employees

in the granting of pay increases. Our one experience last year proved how ill-advised the marriage really is. In order to vote pay hikes to all Federal workers who had been hit hard by inflation and rises in the cost of living, we in this Chamber were obliged to feather our own nest by sharing in the raise.

Despite my long-held opinion that Members of Congress should receive salary increases in order to keep Government service from losing quality people and becoming a rich man's game, I was faced with a dilemma when raises were voted last September. At that time, with the Congress dawdling and failing miserably to deal with our major national problem—the energy crisis—I felt we did not deserve a raise. The time had come to earn it. I could not justify voting myself and my colleagues a raise until the Congress began to earn its keep by creating a national energy policy.

Yet, by opposing a congressional hike, I was forced to oppose it for all Federal employees—men and women who had done their work and deserved a boost. Faced with this dilemma, I voted “present” as a way of expressing my disapproval to a congressional payraise, while not hurting Federal employees.

While I would have preferred to repeal the law which linked Federal employees and Members of Congress, the Allen amendment is a step in the right direction.

Under the Allen amendment, should the President transmit to the Congress an alternative payraise plan to that proposed by the Pay Board, then the salaries of Members of Congress will only be raised by that lower amount designated by the President. If the Congress wishes to increase the payraise, it must do so by a separate resolution. Thus, recommendations for salary increases for Federal employees will be judged separately on their merits—without the intrusion of self-serving interests.

Mr. McGEE. Mr. President, I had moved to table the amendment. I ask unanimous consent that I may withdraw my motion and that there be an up and down vote.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McGEE. Mr. President, I yield back the remainder of my time.

Mr. TAFT. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce

that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Idaho (Mr. CHURCH), the Senator from California

(Mr. CRANSTON), the Senator from Mississippi (Mr. EASTLAND), the Senator from Alaska (Mr. GRAVEL), the Senator from Hawaii (Mr. INOUE), the Senator from Louisiana (Mr. LONG), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Maine (Mr. MUSKIE), the Senator from Connecticut (Mr. RIBICOFF), and the Senator from California (Mr. TUNNEY) are necessarily absent.

I further announce that the Senator from New Mexico (Mr. MONTOYA) is absent on official business.

Mr. GRIFFIN. I announce that the Senator from Arizona (Mr. GOLDWATER), the Senator from Nebraska (Mr. HRUSKA), the Senator from Idaho (Mr. McCURE), and the Senator from Illinois (Mr. PERCY) are necessarily absent.

I further announce that the Senator from Vermont (Mr. STAFFORD) is absent due to illness in the family.

The result was announced—yeas 43, nays 40, as follows:

[Rollcall Vote No. 68 Leg.]

YEAS—43

Allen	Domenici	Nunn
Baker	Durkin	Proxmire
Bartlett	Eagleton	Randolph
Beall	Fannin	Roth
Bentsen	Garn	Scott, Hugh
Biden	Glenn	Stennis
Brock	Hansen	Stone
Brooke	Hart, Gary	Symington
Burdick	Helms	Taft
Byrd,	Johnston	Talmadge
Harry F., Jr.	Laxalt	Thurmond
Byrd, Robert C.	Leahy	Tower
Clark	Mansfield	Weicker
Culver	McClellan	Young
Curtis	Metcalfe	

NAYS—40

Bayh	Hatfield	Moss
Bellmon	Hathaway	Nelson
Buckley	Hollings	Packwood
Bumpers	Huddleston	Pastore
Cannon	Humphrey	Pearson
Case	Jackson	Pell
Chiles	Javits	Schweiker
Dole	Kennedy	Scott,
Fong	Magnuson	William L.
Ford	Mathias	Sparkman
Griffin	McGee	Stevens
Hart, Philip A.	McIntyre	Stevenson
Hartke	Mondale	Williams
Haskell	Morgan	

NOT VOTING—17

Abourezk	Hruska	Muskie
Church	Inouye	Percy
Cranston	Long	Ribicoff
Eastland	McCure	Stafford
Goldwater	McGovern	Tunney
Gravel	Montoya	

So Mr. TAFT's amendment was agreed to.

Mr. MATHIAS addressed the Chair.

The PRESIDING OFFICER (Mr. LEAHY). The Senator from Maryland.

Mr. MCGEE. Mr. President, I suggest the absence of a quorum.

Mr. MATHIAS. But without losing my right to the floor.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MATHIAS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MCGEE. Mr. President, will the Senator from Maryland yield for a yeas and nays request?

Mr. MATHIAS. Without losing my right to the floor.

Mr. MCGEE. On final passage.

The PRESIDING OFFICER. The yeas and nays are already ordered on final passage.

The Chair reverses itself. There is a question as to whether the yeas and nays have been ordered.

Does the Senator from Wyoming request the yeas and nays on final passage?

Mr. MCGEE. Yes. I thought I heard myself coming in.

[Laughter.]

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. MCGEE. Third reading.

The PRESIDING OFFICER. The question is on the engrossment of the amendments and third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time. The bill was read the third time.

Mr. MATHIAS. Mr. President, I am cognizant of the fact that it is the hour in which we all, as the Senator from Rhode Island says, want to go home and have dinner with our families. But I am sufficiently concerned with what has been happening here on the floor in the last 48 hours to feel that we just ought to pause for a very few minutes to recapitulate a little bit because we are tearing down a fabric which took many years to construct, a fabric which, admittedly, puts some restraint on the political activities of an important group of American citizens, the Federal employees, but a fabric which has also been constructed as a shield for those citizens.

And in the work in which we are engaged, the wrecking work that is going on here, we are forgetting some of the careful and thoughtful and constructive achievements of the Senate which were led in 1939 by the late distinguished Senator from New Mexico (Mr. Hatch) and just a few years ago by our colleague,

Sam Irvin.

I want to allude very briefly to the findings of the Watergate Committee which bear directly on this bill and, briefly, to some of the background which led to the enactment of the Hatch Act.

The Hatch Act problem is not a new problem. The problem of the participation of Federal employees in the activities of Government goes back as far as the administration of Thomas Jefferson.

It is a very new problem, too, because I have here a statement, an article from the Washington Post of March 9, 1976, in which a Senate Finance Committee aide said that his appointment to a high post in the Department of Health, Education, and Welfare was blocked by the White House because he refused to register as a Republican.

We have this kind of problem with the protection of the Hatch Act. We will have worse problems when the protections of the Hatch Act are substantially swept away.

Mr. President, I ask unanimous consent that this article in full be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Mar. 9, 1976]

BLOCKED APPOINTEE CHARGES POLITICS

(By Stuart Auerbach)

A Senate Finance Committee aide said that his appointment to a high post in the Department of Health, Education and Welfare was blocked by the White House because he refused to register as a Republican.

Dr. James J. Mongan said the White House had approved his appointment as deputy assistant secretary of HEW for health but backed off when Illinois Rep. Robert Michel, the Republican House whip, complained that he wasn't a Republican.

Mongan, a staff aide for the Finance Committee, added that Bill Ballinger, the HEW special projects officer in charge of patronage, and Jack Shaw of the White House personnel office told him "the appointment could most likely be made only if I registered as a Republican."

"Though I do not have a strong personal partisan inclination, I did feel it would both be opportunistic and nonprofessional to register solely to be appointed," said Mongan in a letter to people who supported his nomination.

Although he has been registered Democrat before coming to Washington six years ago, Mongan called himself "an unregistered independent," who has worked with both Democratic and Republican members of the Finance Committee.

He said he was notified by the White House last week that his appointment would not go through. While the appointment is made by the HEW secretary, it generally requires political clearance from the White House.

Ralph Vinovich, Rep. Michel's administrative assistant, said that he had told Mongan that the congressman wasn't opposed to him, but was supporting Dr. William B. Munier, who is now the acting director of HEW's Office of Quality Standards.

"He had strong support among Republicans in the country and was qualified professionally," said Vinovich.

He added that it was "unfortunate" that Ballinger and Shaw would say that Mongan could get the job if he would register as a Republican.

Mongan had the strong support of Dr. Theodore Cooper, assistant secretary for health. He would have been in charge of the government's program to improve the quality of medical care Americans receive.

As a Finance Committee aide, Mongan had helped write quality controls into the Medicaid and Medicare laws. This effort had drawn opposition from organized medicine, and HEW sources said Mongan's appointment was opposed by doctors in Illinois.

Mr. MATHIAS. Mr. President, I have had in my service in the Congress appeals from Federal employees who come to me and say in my office, "They have shaken me down. They are trying to make me contribute. I do not want to contribute, but if I do not contribute, I am nervous about what is going to happen to me."

These events, incidentally have occurred with the Hatch Act in place. I am sure there will be more of them when the Hatch Act is repealed.

I remind my friends on the other side of the aisle that it was the accomplishment of a great Democratic administration which brought about the reform of the spoils systems and the enactment of the Hatch Act.

In 1936, just prior to the consideration of appropriations by the Congress, Harry Hopkins, who was then Administrator of the Works Progress Administration, issued a directive to all State Works Progress administrators that persons who are candidates for, or hold elective offices, shall not be employed on administrative staffs of the Works Progress Administration.

That was one of the places that the Hatch Act idea first was originated because during those periods in the rapid growth of the Federal Government there was a tremendous problem of the misapplication of Federal funds in the programs that were initiated in that period. That apprehension and concern grew, and it grew to the point that finally the Congress in 1939 passed what we now call the Hatch Act.

It was viewed in those days as a tremendous reform. It was viewed in those days as an important safeguard for the general public because it protected the

general public from the chance that partisan political motives would intervene in the public acts of officials who were, by night, taking an active part in partisan politics, and this concern exists today.

In the testimony of Donald C. Alexander, a Commissioner of the IRS, he says there have been attempts to misuse the Internal Revenue Service, with its great powers, to acquire personal and sensitive information and to make financial decisions affecting all taxpayers. The protections now afforded by the merit system, including the restrictions on political activities under the current Hatch Act, have helped try to assure the public that taxes are collected and tax investigations conducted in a proper and impartial manner.

Now we are putting an end to all that.

Mr. Carl Goodman, General Counsel of the Civil Service Commission, who is himself a career public employee, a Federal employee, says:

In our opinion, the inherent dangers in permitting employees to exchange political contributions with one another should be obvious. I would like to present for your consideration, and so forth.

There is a man who not only has an official duty to perform in this area, but who has, as a civil servant himself, known the protection of the Hatch Act. His personal testimony on that score is that as a career civil servant who first joined the Government in 1961, and is himself subject to the Hatch Act and benefits from those provisions, he is always mindful that the Hatch Act is intended to strike a delicate balance between the very same freedoms guaranteed the citizens of this Nation by our Constitution and the compelling interest of the Government and the people whom we serve to have the benefit of an impartial and efficient civil service, a civil service free from the encroachment of partisan political influence, a civil service which administers the laws of the land and the programs of the Government in accordance with the will of the people as expressed under the legislative process and not colored by the political philosophy and beliefs of the civil servants who perform the work of the Government.

I would like to turn for a minute to the final report of the Select Committee on Presidential Campaign Activities of the U.S. Senate, better known, Mr. President, as the Watergate Committee, the Ervin Committee.

Now, what did that committee recommend in this regard?

On page 444 of the Watergate Committee report, the committee's sixth recommendation was this:

The committee recommends that Congress amend the Hatch Act to place all Justice Department officials—including the Attorney General—under its purview.

Sam Ervin did not say, "Repeal the Hatch Act."

Sam Ervin did not say, "Cut the Hatch Act down to just a bare shadow."

He said, "Expand it, extend it." Now, why? Why did he say that?

He said it because of the evidence that came before the Watergate Committee.

One of the examples was in the Evans to Colson weekly staff report which appears on page 423 of the committee report, and which is quoted as follows:

It appears that HEW has agreed to produce 60 copies of the Richardson, Flemming, Rocha TV program taping. This will then be distributed simultaneously to the top TV stations in all of our key states. It is a very political show which stresses time and time again the fantastic things the President has done for older people, which is why the need for simultaneous distribution. This should be shown in late July or early August. In any event, it will be shown before the President is nominated.

That is just one example of the way a supposedly nonpartisan part of the Government was being manipulated for political purposes.

On the following page, 424, they give examples of a DOL contract for \$1.5 million for services from June 30, 1972, to January 31, 1974, to train and provide work for 350 poor elderly persons, and an OEO grant of \$399,839 for developing new methods to overcome the special problem of the Spanish-speaking elderly poor. But the GAO, concerning these two awards, has now concluded that the grant and contract awards were processed outside of the normal procedures. Officials of Labor and OEO said that both the grant and the contract had substantial White House backing.

Again, an example in a government such as ours in which the Federal Government is constantly making grants, awards, and payments, that the more politicized the bureaucracy is, the more chance we will be right back to the kind of conditions that Harry Hopkins tried to overcome by Executive order in 1936 and which the Congress finally addressed when it dealt with the problem by adopting the Hatch Act in 1939.

I could continue at great length in reading example after example from the Watergate report, but I think it is useless to do that, other than to point out that the evidence is there. If we enact the bill which is now before us, we will be flying in the face of the recommendations which our own committee, the Watergate Committee, made, which was to expand the Hatch Act, not to virtually repeal it.

A question, of course, arises, and other Members have asked me privately, what is the view of a majority of the civil servants? I think this is an extremely important question. I cannot, in all honesty, say that I know what the views of the majority of the civil servants are. I have many civil servants who are my constituents. I have talked with them over 15 years about their problems. I know the benefit of the protection of the Hatch Act is an important thing to them. I would note that this bill, in the form in which it came from the committee and in the form in which it now is before the Senate for a final decision, was opposed by the Representative from Montgomery County, the 8th Congressional District, Mr. GILBERT GUDE.

Mr. BEALL. Will the Senator yield on that point?

Mr. MATHIAS. I am happy to yield.

Mr. BEALL. The Senator was not here earlier when I pointed out that we recently sent out a questionnaire among the people of Maryland. We have now received back about 120,000 responses to this questionnaire. One of the questions on that questionnaire was, "Do you favor liberalizing the Hatch Act to permit Federal employees a greater amount of participation in partisan political activities?"

As I pointed out earlier in the afternoon, 70 percent of the people of Maryland who answered said they did not favor liberalization of the Hatch Act, while 30 percent said they do.

More particularly, as my senior colleague from Maryland knows, we have over 131,600 Federal employees in our State, and I venture to say that a high percentage of them are concentrated in the suburban Washington counties of Montgomery and Prince Georges. Although obviously everyone who answered my questionnaire is not a Federal employee, there is reason to believe that, of those who answered from Montgomery and Prince Georges County, a high percentage are Federal employees. Interesting to me was the fact that in Montgomery County, when asked the question do you favor a liberalization of the Hatch Act, 62 percent said no and 38 percent said yes, and in Prince Georges County 66 percent said no, they did not favor the liberalization.

So it seems to me that a substantial number of Federal employees do not want to have the protection of the Hatch Act removed. It is indeed a protection for them, as my distinguished colleague pointed out earlier, because it protects them from having undue pressures put upon them by those who want them to participate in Federal elections against their own will.

I believe my colleague is exactly right in making the points that he did; that this bill is going contrary to the recent expressions of the committees that have had the opportunity to really investigate the political processes at the instruction of the Senate, and who have not recommended its liberalization, but, in most cases, have suggested the tightening up and expansion of the restrictions under the current Hatch Act.

Mr. MATHIAS. I thank my colleague from Maryland. I believe that is a valuable contribution.

As I say, the wishes of the people most nearly involved, the Federal employees themselves, are critical to a decision on the bill.

I pointed out that Mr. GUDE, who represents the third largest civil servant constituency in the country, opposes the bill.

Mr. FISHER, in Virginia, who represents the second largest civil servant constituency in the country, opposes the bill.

Both of them are gentlemen who are very sensitive to the public opinion in their constituencies. I believe they have put themselves and their reputations on the line on this. I find the positions they have taken very influential as to how people in their congressional districts feel about the bill.

I have alluded to the legislative history of the bill, going back to the time of Harry Hopkins, through the distinguished work Senator Hatch did, and the work which Senator Sam Ervin did in connection with the recommendations of the Watergate committee. But this is a Bicentennial Year and maybe we should go back just a little bit further in history than those fairly recent events, which all of us can remember in one way or another.

Very briefly, in 1801 Thomas Jefferson addressed himself to this very problem. This is not long and will not take long to read.

Jefferson issued a circular to be distributed to all Government offices which stated, in part:

The President of the United States has seen with dissatisfaction officers of the general Government taking, on various occasions, active parts in the elections of public functionaries, whether of the general or State governments. The right of any officer to give his vote in elections as a qualified citizen is not meant to be restrained; nor however given shall it have any effect to his prejudice. But it is expected that he will not attempt to influence the votes of others nor take any part in the business of electioneering, that being deemed inconsistent with the spirit of the Constitution and his duties to it.

There it is in a nutshell, that "he

will not take any part in the business of electioneering, that being deemed inconsistent with the spirit of the Constitution and his duties to it."

We are saying Thomas Jefferson was wrong if we adopt this bill. We are not only saying that Sam Ervin was wrong and that Carl Hatch was wrong, and that Harry Hopkins was wrong, but we are saying that Thomas Jefferson was wrong, too. We are, I believe, surrendering an important protection which is of great value to several millions of American citizens who work for the Federal Government, who will, if this bill is adopted, I think, find themselves the targets for political demands, some of them for money. Those will be the simple ones. "Buy a ticket."

Does anyone know what they did at the VA even with the Hatch Act? They went around and said, "Everybody pony up \$100 and we will buy some \$1,000 dinner tickets. We will give the Administrator one of those \$1,000 tickets, and then we will have a raffle of some kind and another lucky fellow who had to cough up \$100 will get that \$1,000 ticket."

They did that with the Hatch Act. They could all have been held accountable. But there will not be any accountability for those things in the future. All these Federal employees who are concerned about that will be concerned about the action of the Senate in this bill.

Those things have taken place. I do not think we can be blind to the fact that they have taken place. But we will be making it easier for them to take place in the future, and I think that is a heavy responsibility for us to assume.

The evidence of what public employees feel about this rests upon polls such as my colleague from Maryland has given us and of Representatives from Maryland and Virginia who represent heavy public service constituencies. But there is a background.

In 1967, for example, the National Federation of Federal Employees found that 89 percent of the respondents supported the Hatch Act as is, while only 1 percent felt it should be repealed. That was a few years ago; maybe attitudes have changed. I myself have felt that participation in local elections should be permissible under the Hatch Act. I cannot vouch for those figures, but I think we at least should attempt to know how the people most closely affected feel about this.

So, Mr. President, I do not want to detain anyone from going home and having dinner with the family, but we are taking a very serious step backward here—a step which is against the advice

of very important American leaders at a number of periods in our history, from Thomas Jefferson in 1801 down to the adoption of this act in 1939. It is a step which I hope the Senate will think twice about. I would regret to see as constructive a legislative program as that embodied in the Hatch Act abandoned lightly, or without the kind of thoughtful consideration that it deserves.

Mr. President, the Legislative Reference Service has prepared a legislative history of the Hatch Act, embodying a study of the intent of the President and Congress at the time of enactment. I ask unanimous consent that that legislative history be printed in the Record at this point.

There being no objection, the legislative history was ordered to be printed in the Record, as follows:

APPENDIX II—LEGISLATIVE HISTORY OF THE HATCH ACT—INTENT OF THE PRESIDENT AND THE CONGRESS AT TIME OF ENACTMENT

At the time Congress was considering the Emergency Relief Appropriation Act of 1936 [H.R. 12624], calling for \$1,425,000,000 for relief, there was considerable criticism that politics was being injected into the program. On February 21, 1936, just prior to consideration of the appropriations by Congress, Harry Hopkins, Administrator of the Works Progress Administration, to alleviate this criticism, issued a directive to all State Works Progress Administrators that "persons who are candidates for or hold elective offices shall not be employed on administrative staffs of the Works Progress Administration." The ruling applied to non-relief supervisory personnel on works projects as well as to State, district, and field administrative staffs. General Letter No. 2, February 21, 1936, published in Congressional Record Vol. 80, p. 7566. To give added impetus to this policy of the administration Senator Bilbo, on June 1, 1936, offered an amendment to the Emergency Relief Appropriations Bill [H.R. 12624] incorporating in substance the order of Hopkins. The Bilbo amendment was adopted, C. R., Vol. 80, pp. 7566, 8508; H. Rept. No. 3013 (Conference), p. 3, Tit. II; Public Law No. 730, June 22, 1936, 49 Stat. 1597, 1610. The same prohibition was written into subsequent Emergency Relief Appropriation Acts, [H.J. Res. 361] June 29, 1937, Sec. 6, Title I, Pub. Res. No. 47, 50 Stat. 352, 355 and [H.J. Res. 679] June 21, 1938, Sec. 14, Tit. I, Pub. Res. No. 122, 52 Stat. 809. An amendment offered by Senator Vandenberg and adopted at the same time as was the Bilbo amendment prohibited discrimination in giving relief or employment or approval of applications for projects on account of political affiliations. This amendment also appeared in subsequent appropriations acts.

In the meantime, public concern over misapplication of relief funds seemed to grow and the Senate on June 10, 1937, created a Special Committee to Investigate Unemployment and Relief. S. Res. 36, 75th Cong.; C.R., Vol. 81, pp. 73, 5515 (Introduced by Messrs. Hatch and Murray). This committee composed of Senators Byrnes, chairman, Clark,

Frazer, Hatch, Murray, Davis and Lodge submitted a preliminary report on April 20, 1938.

The Committee did not report on political activities as some expected. The Committee had adopted a policy of not inviting to its hearings witnesses seeking to be heard for the purpose of making charges of political influence against the administration of the Works Progress Administration. To have adopted any other policy, according to the chairman, would have required giving the administrative officials charged an opportunity to be heard. See S. Rept. No. 1625, pt. 2, p. 4.

When the Emergency Relief Appropriation Bill of 1938 [H.R. 679] was before the Senate, Senator Hatch offered an amendment designed to prevent any person employed by the Federal Government in an administrative capacity and paid from relief funds from using "his official authority or influence for the purpose of interfering with or influencing a convention, a primary, or other election, or affecting the results thereof." Under the proposal however "any such person shall retain the right to vote as he pleases and to express his opinions on all political subjects, but shall take no active part in political management or in political campaigns." The penalty was removal from position or office. This amendment sought to apply to those persons in administrative positions of the Federal Works Progress Administration the same restrictions then imposed on Civil Service employees by Civil Service Rule I. The amendment was defeated in the Senate on June 2, 1938. See C.R., Vol. 83, pp. 5569 (original amd.), 7999-8000 (colloquy between Barkley, Byrnes and Hatch); Vol. 84, p. 11154 (this amd. same as Sec. 9 of later act).

The Relief Appropriations Bill [H.J. Res. 679] thus passed the Senate on June 3, 1938, without the Hatch amendment. However, five days later, June 7, 1938, Senator Tydings along with several other Senators asked that a special committee be created to investigate the alleged use of relief and work-relief funds for political purposes. This resolution [S. Res. 290] was agreed to June 16, 1938 but was so amended as to direct that the investigation be made by the Special Senatorial Campaign Expenditures Committee which had been created [S. Res. 283] on May 27, 1938. This special committee was composed of Senators Sheppard, chairman, O'Mahoney, Brown, Norris, Austin and Welsh of Massachusetts. C.R., Vol. 83, pp. 7632, 7803, 8152, 8278, 9133.

During the election campaigns of 1938, there was much publicity about use of Federal relief funds for political purposes. On January 3, 1939, the Sheppard Committee on Campaign Expenditures and Use of Government Funds [of which Mr. Hatch was a member] reported [S. Rept. No. 1, 76th Cong.] that sufficient misuse of Federal relief funds prompted them to make the following recommendations:

I. The committee in the course of its work has been compelled to give much of its attention to charges of undue political activity in connection with the administration and conduct of the Works Progress Administration in certain States. While many of these charges, after investigation, were not sus-

tained, the committee nevertheless finds that there has been in several States, and in many forms, unjustifiable political activity in connection with the work of the Works Progress Administration in such States. The committee believes that funds appropriated by the Congress for the relief of those in need and distress have been in many instances diverted from these high purposes to political ends. The committee condemns this conduct and recommends to the Senate that legislation be prepared to make impossible, so far as legislation can do so, further offenses of this character.

II. The committee recommends legislation prohibiting contributions for any political purpose whatsoever by any person who is the beneficiary of Federal relief funds or who is engaged in the administration of relief laws of the Federal Government. The committee also recommends legislation prohibiting any person engaged in the administration of Federal relief laws from using his official authority or influence to coerce the political action of any person or body.

III. The committee recommends that section 19, title 1, of the present Work Relief Act, making it a misdemeanor for any person knowingly, by means of fraud, force, threat, intimidation, boycott, or discrimination on account of race, religion, political affiliations, or membership in a labor organization, to deprive any person of any of the benefits to which he may be entitled under the Work Relief Act, be so amended as to make such violation a felony instead of a misdemeanor.

IV. The committee recommends that all Federal relief acts should be so amended as to provide that any person who knowingly makes, furnishes, or discloses any list of persons receiving benefits under such acts or of persons engaged in the administration thereof, for delivery to a political candidate, committee, campaign manager, or employee thereof shall be deemed guilty of a misdemeanor.

V. The committee recommends that section 208, Title 18, of the United States Code be so amended as to prohibit not only the soliciting and receiving of political contributions by officials, employees, and persons now named in that section, but also by anyone acting in their behalf.

VI. The committee recommends that section 211, Title 18, of the United States Code be so amended as to prohibit political contributions not only by Federal employees to any Senator or Member of or Delegate or Resident Commissioner to Congress, but also to any candidate for such offices, or to any person or committee acting with the knowledge and consent and especially in behalf of such Senator or Member of or Delegate to Congress or Resident Commissioner therein, or of any candidate for such office.

VII. The committee recommends that there should be a limitation upon contributions which individuals may make in behalf of a candidate seeking election to Federal office.

VIII. The committee recommends that section 209, Title 18, of the United States Code, relating to solicitation for political contribu-

tions in any room or building occupied in the performance of official duties by any person in the employ of the Federal Government be

so amended as to include solicitation by letter and telephone, as well as in person.

IX. The committee recommends the adoption by the Senate of a rule requiring all candidates for the Senate to file with the Secretary of the Senate, in response to appropriate questionnaires, a full and complete statement of receipts and expenditures incurred by or in behalf of such candidates in their campaigns for nomination as well as for election.

X. The committee recommends that section 313 of the Federal Corrupt Practices Act be so amended as to prohibit any contribution by any national bank, any corporation organized by authority of any law of Congress, or by any corporation engaged in interstate or foreign commerce of the United States, in connection with any primary or general election.

XI. The committee recommends that subsection (c), section 309, of the Federal Corrupt Practices Act be so amended as to require candidates to report all their campaign expenditures, including those exempted in determining the amount they are allowed to spend under the law.

XII. The committee recommends that section 310 of the Federal Corrupt Practices Act be so amended as to prohibit candidates from promising work, employment, money, or other benefits in connection with public relief.

XIII. The committee recommends the enactment of a law regulating more strictly the use of the franking privilege.

XIV. The committee recommends that the Senate take under consideration the question whether or not a contribution for political purposes made either voluntarily or by persons in the employ of the Federal Government should be permitted.

XV. The committee recommends that the Senate take under consideration the question of legislation in connection with coalition and group tickets.

XVI. The committee recommends that the Senate adopt a rule authorizing the Vice President to appoint, at the beginning of each Congress, for the duration of said Congress, a Senate committee on investigation of senatorial campaign expenditures, campaign activities, and use of governmental funds for the purpose of influencing primaries and general elections.

On the next day after the Sheppard Committee reported, Senator Hatch introduced two bills [S. 212 and 213] which he later incorporated into a single bill, S. 1871, which he, along with Senators Sheppard and Austin, introduced on March 20, 1939. This bill [S. 1871] subsequently was enacted and became known as the Hatch Act.

Just 11 days after the Sheppard Committee's report, the Byrnes Committee to Investigate Unemployment reported [S. Rept. No. 2, 76th Cong.], giving its approval to the recommendations of the Sheppard Committee and further recommending that all future appropriations for relief contain provisions to secure absolute independence of political action for persons receiving benefits. The recommendation was later incorporated in the Hatch Bill [S. 1871] and became section 3 of the Act but was not limited to relief

benefits or appropriations but is applicable to benefits made possible by any Act of Congress. The Byrnes Committee also recommended what, in substance, became section 4 of the Hatch Act. The Byrnes Committee also recommended enactment of the amendment originally proposed by Senator Hatch to the Relief Appropriation Act of 1938 [H.J. Res. 679] but which had been defeated in the Senate on June 2, 1938. See S. Rept. No. 2, pt. 1, pp. 7-8, 76th Cong.

The amendments recommended by the Byrnes Committee [of which Mr. Hatch was a member] were incorporated in Deficiency Relief Appropriations bill [H.J. Res. 83] reported from the Senate Appropriations Committee on January 21, 1939. The Appropriations Committee stated that "the legislation was recommended by the Committee . . . in consonance with recommendations of the President of the United States in his message of January 5, 1939, the Special Committee to Investigate Senatorial Campaign Expenditures and the use of Governmental Funds in 1938, and the Special Committee to Investigate Unemployment and Relief." S. Rept. No. 4, pp. 3-4, 76th Cong.

When the Committee amendments were up for adoption both Senators Hatch and Barkley sought to perfect the amendments by having the same law apply to any other appropriations—not merely to the Works Progress Administration. The Barkley amendments were adopted on January 28, 1939. Cong. Rec. Vol. pp. 904-905.

In his message to Congress, January 5, 1939, on the needs of the Works Progress Administration, President Roosevelt advised Congress that by Executive Order No. 7916 he intended to bring administrative employees of Works Progress Administration under Civil Service. This, however, Congress prohibited. Roosevelt was of the opinion that if this group was brought under Civil Service they would become subject to the general prohibitions as to political activities of Civil Service Rule I which already applied to other Federal employees covered by Civil Service. The Public Papers and Addresses of Franklin D. Roosevelt, Vol. 8, Item No. 5, p. 58 nd 59.

On April 13, 1939, the Senate passed the Hatch Bill [S. 1871]. For comment see N.Y. Times, April 14, 1939, p. 17, Col 3.

On April 27, 1939, President Roosevelt sent a message to Congress on relief needs in which he said he approved of Congressional attempt to halt political activity connected with the relief program but thought this could be best achieved by placing administrative employees of the W.P.A. under Civil Service, a recommendation that Congress rejected in January. The message said:

"The Congress has recently made provisions against improper political activity on the part of persons connected with the work relief program—provisions affecting not only Federal employees but all persons who may be in a position to bring improper pressure to bear.

"Such legislation was recommended in my message of January 5, 1939, and has my hearty endorsement. However, insofar as the administrative employees of the Works Progress Administration and of the other agen-

cies connected with the work relief program are concerned, I believe that the political provisions just mentioned would be more constructive and their enforcement would be simpler if the Congress would place such employees within the classified Civil Service." (The Public Papers and Addresses of Franklin D. Roosevelt, Vol. 8, Item 71, p. 289. [For comment see New York Times, April 28, 1939, p. 12, Col. 2].)

At his White House press conference on July 28, 1939, President Roosevelt described himself as in favor of the objectives of the Hatch bill, but proceeded to raise such questions as to its operation and to raise still another question as to whether he would sign it. He said he would consult with Secretary of Commerce Harry Hopkins, who had been Works Progress Administrator at the time of many of the activities which provoked the Hatch bill, and Frank Walker, Secretary of the Democratic National Committee.

President Roosevelt signed the Hatch Act on August 2, 1939, and sent to Congress a message giving his interpretation of the law. He also recommended (1) that persons in the District of Columbia and nearby Maryland and Virginia should be allowed to run for local offices and (2) that the law be extended to cover State and local employees who are candidates for Federal office. Roosevelt contended (on advice of the Attorney General) that the new law was constitutional in that the Federal Government may prescribe qualifications for its employees but such qualifications cannot interfere with free speech or exercise of the franchise. He said Americans will not stand for "any gag act." Noting that members of Congress and employees of the legislative branch of the Government are exempt from the provisions of the act (he meant exempt from some sections of the Act) he contended (again on advice of the Attorney General) that any government employee has the right to publicly answer any attack made on him, whether the attack is made by press or radio or by a member of Congress or by an employee of the Congress. See S. Doc. No. 105, 76th Cong., message on S. 1871, August 2, 1939; also see The Public Papers, etc. Vol. [No. 100, the Hatch Act] pp. 410-415.

Section 9 of the Hatch Act is probably the most controversial and its meaning has been subjected to various interpretations. This section prohibits an employee of the executive department to use his official authority or influence to interfere with the result of an election. It also prohibits an officer or employee of the executive department to take an active part in political management or campaigns. Such persons, however, retain their right to vote and to express their opinions on political subjects. The prohibitions do not apply to (1) the President or Vice President, (2) persons paid from appropriations for the office of the President, (3) heads or assistant heads of departments, or (4) officers appointed by the President with the advice and consent of the Senate, and who determine policies to be pursued by the United States in its relations with foreign powers or in the Nationwide administration of Federal laws. 53 Stat. 1148; 5 U.S.C. 1181.

This section 9 is a rewording of Civil Service Rule I as it then existed as applied to employees covered by Civil Service (Section 2 of the Act was a rewording of Civil Service Rule I to make the same prohibitions apply to persons in administrative positions on federally financed projects.) S. Rept. No. 2, pt. 1, p. 7, 76th Cong. This was amended in 1940 to also cover State and municipal employees whose salaries are paid in part from Federal funds. The penalty here is more severe. 54 Stat. 767, 18 U.S.C. 595).

Civil Service Rule I, section 1, at the time of enactment of the Hatch Act read as follows:

"Persons who by the provisions of these rules are in the competitive classified service, while retaining the right to vote as they please and to express privately their opinions on all political subjects, shall take no active part in political management or in political campaigns."

This rule has been recodified by the Civil Service Commission and now appears as section 4:1 of Rule IV.

Mr. HARRY F. BYRD, JR. Mr. President, I commend the able Senator from Maryland for his splendid presentation as to why the pending legislation should not be approved. I associate myself with his remarks. I think he has brought out some very important documentary information for the benefit of the Senate as to the importance of the Hatch Act in protecting the Federal employees. While it puts some restrictions on political activities insofar as Federal elections are concerned, it also simultaneously serves as a shield to protect the Federal employees.

What the Senator from Maryland has said reinforces my belief that passage of the pending legislation, H.R. 8617, would do a serious disservice both to the Federal employee and to the public.

Even with the current safeguards of the Hatch Act, attempts have been made in recent years to politicize the various agencies of Government and subvert the civil service merit system.

Washington is a very political-minded town—too partisanly political, in my judgment. If Federal employees are not protected from political harassment, both the employee and the public will be the loser.

At this time when confidence in Government has been shaken, I cannot support a further erosion of public confidence in the valid expectation of receiving impartial and objective service from governmental officials.

Government employees, as a whole, are dedicated and conscientious in the performance of their duties. I think that underlying their ability to act objectively and impartially has been the absence of fear of political reprisal—or hope of political reward—which has been afforded them by the Hatch Act.

I feel that there may well be some areas of the Hatch Act that should be improved. Improvement, however, does not mean virtual elimination of existing law, which, in effect, H.R. 8617 would accomplish. While the Hatch Act does put some restrictions on Federal employees in Federal elections, it simultaneously serves as a shield to protect the Federal employees.

The important thing to keep in mind, I think, is maintaining high standards and integrity in public service, while permitting reasonable activity in public matters.

At the same time, we must provide needed and desirable protection of the public employee from political coercion either from within or without the Government service.

By and large, Government employees have achieved a high degree of objectivity and integrity in the day-to-day operation of our huge and complex Government. We must be able to continue to rely on their impartiality and fairness. And, we must provide them with the proper protection and atmosphere to so act.

This bill which eliminates so many safeguards of the Hatch Act simply does not provide adequately for these needs. Both the Government employee and the public deserve better treatment than I fear they will be subjected to if this legislation is enacted.

For these reasons, I cannot support the pending bill and shall vote against it.

In closing, I want to note that the number of Federal employees residing in Virginia is the fourth or fifth largest in the country. Consequently, I, as well as my colleagues from both Virginia and Maryland, which has a great number of Federal employees, have had more opportunity than most to know and respect many, many hard-working men and women at all levels of Government service. The four Senators representing Virginia and Maryland feel the pending legislation is not in the best interests of Federal employees.

I want to take this opportunity to recognize the many contributions Federal employees make to the Nation daily, of which so often we are not specifically aware.

I commend the Federal employees on their diligence and accomplishments—and I shall seek to protect them from political harassment by voting against the effort to emasculate the Hatch Act.

Mr. GRIFFIN. Mr. President, will the Senator from Virginia yield?

Mr. HARRY F. BYRD, JR. I am pleased to yield to the Senator from Michigan.

Mr. GRIFFIN. I take it from the statements made by the Senators from Maryland, which has a large number of Federal employees, that most of the Federal employees in Maryland do not want the Hatch Act changed. Is that also true of the Federal employees living in Virginia?

Mr. HARRY F. BYRD, JR. I think that is the case. I have no documentary evidence to substantiate that assertion. No polls, as far as I know, have been taken in Virginia such as the Senator from Maryland (Mr. BEALL) took in the State of Maryland. But my belief is that the Federal employees who reside in the State of Virginia would prefer to maintain as it is the shield of the Hatch Act, which prevents political pressure or harassment from being applied to them.

Mr. GRIFFIN. If it is the case that most of the Federal employees in the Washington area do not want this legislation, who does want it? Where is the pressure coming from to pass this? Are we to believe that a majority of the American people believe that the Hatch Act should be repealed?

Mr. HARRY F. BYRD, JR. I certainly would not think so, but as to where the pressure is coming from to weaken the Hatch Act, that question would best be directed to someone else other than the Senator from Virginia.

Mr. GRIFFIN. I appreciate the Senator's answer. It is strange to me that we would have a majority in the Senate who would vote for such a bill. I do not know who they are representing. I do not think it is the American people who demand this change in the Hatch Act.

I thank the Senator.

Mr. FONG. Mr. President, I commend our two distinguished colleagues for their very fine statements. I join them in the statement that this proposed change in the Hatch Act would be a tremendous detriment to the Federal worker.

Mr. President, the Hatch Act is the product of a long and difficult effort by our Government to set proper limits to participation in partisan political activity by Federal officials and employees. This effort was started in the very early years in our Nation's history and evolved slowly.

I will here only briefly review the highlights of that history. It will indicate how dedicated, concerned leaders of our country have tried diligently to control the problem of partisan politics in our Federal bureaucracy. H.R. 8617, the bill before us now, if enacted, would make a mockery of the labors of those who preceded us.

Our first President, George Washington, called attention to his unhappiness with the politicking of Government personnel in his day. Later, in 1801, Presi-

dent Jefferson issued the first Executive order to admonish Federal employees from taking part in political electioneering.

In 1883, following the shocking assassination of President Garfield by a disgruntled office seeker, Congress enacted the first civil service law, establishing the Civil Service Commission and placing restrictions on political activities of Federal personnel.

The spoils system which had grown over the years was countered by the passage of the Pendleton Civil Service Act, but the problems of patronage and favoritism in the Government persisted.

In 1907, President Teddy Roosevelt took a long step forward in the right direction by issuing an Executive order which specifically banned Federal employees from taking part in political management and campaigning.

In 1939, Congress passed the Hatch Act in the wake of scandalous solicitation of political contributions from WPA workers under coercion from their bosses during the Great Depression. The restrictions on political activity of Federal personnel in that law are essentially the ones covering our Federal employees today.

The relative lack of major violations of the "no politics" provisions of the Hatch Act attests to the success of the law during its 36 years existence. Time and experience have demonstrated its effectiveness. Yet we are confronted today with a determined attack to scuttle the Hatch Act. The bill before us, H.R. 8617, would not repeal all of the Hatch Act, but it definitely would cut the heart out of the current law. It would undermine, undercut, and emasculate the Hatch Act by repealing the most vital part of the act—the ban on partisan political management and campaigning. For here is the heart of the Hatch Act—that part of the law which really makes it tick. Cut the heart out, and you have gutted the Hatch Act.

Who wants the Hatch Act weakened? Not the Federal employees, for they know it gives them valuable protections from political pressures. In poll after poll, Federal workers have said clearly and loudly, they want the Hatch Act unchanged.

Just this afternoon, we were informed by our colleague, the junior Senator of Maryland (Mr. BEALL) that the results of his recent mail poll showed very strong opposition among his constituents to modifying the Hatch Act. According to Senator BEALL, of the 120,000 responses sent out to his constituents, many of whom are Federal employees, 62 percent of the replies from Montgomery County

and 66 percent for Prince Georges County expressed opposition to changing the Hatch Act. Both counties have a highly concentrated population of Federal employees.

Congressman JOSEPH FISHER, whose district in Virginia has the heaviest con-

centration of Federal employees outside of Washington, D.C., says 59 percent of the 20,000 constituents who responded to his questionnaire do not want the Hatch Act changed. His mail indicated that those who wanted the status quo outnumbered others 8 or 10 to 1. His mail showed a 2 to 1 margin in favor of retaining the Hatch Act as it.

Congressman GILBERT GUDE of Maryland, whose district has the next highest concentration of Federal employees, says:

I think his (Congressman Fisher's) poll clearly shows what I felt was the case in my district and what I think is the case generally with Civil Service employees across the country.

Congresswoman ELIZABETH HOLTZMAN of New York says the response to her questionnaire showed 2 to 1 are against weakening the Hatch Act.

Only 2 out of 3,000 members of the National Federal Executive Institute Alumni Association said they favor legislation to change the Hatch Act.

And so it goes—a very strong sentiment to keep the Hatch Act intact and not to scuttle it.

The Civil Service Commission, which has the responsibility of administering the Hatch Act, is strongly opposed to H.R. 8617. So are the National Civil Service League, which has been fighting for good government on merit for more than 90 years; and also the Organization of Career Employees of the U.S. Department of Agriculture. Strong opposition to H.R. 8617 has also been voiced by many newspapers whose editorials and columns I have inserted in the RECORD.

The main thrust behind H.R. 8617 comes from certain large and powerful public employee unions. They make no secret of their desire to expand political activity by their members in order to develop more political "clout" and to be able to advance their special interests in Washington.

Not all unions have joined in this political power play. Dr. Nathan Wolkomir, president of the largest independent union of career employees—the National Federation of Federal Employees—testified before the Senate Committee on Post Office and Civil Service that his organization has always been and continues to be adamantly opposed to changing the Hatch Act. A poll of his union, representing 136,000 employees,

showed 89 percent for keeping the Hatch Act as it. Their concern, which I share, is that lifting virtually all restrictions on all-out political campaigning and management would jeopardize the merit system, to the detriment of Federal employees and the best interests of the Nation.

During the past 2 days, many facets of the subject of Federal employees' political activity were debated. After all the arguments have been heard and digested, I believe the case is very strong for retaining the current Hatch Act and rejecting H.R. 8617.

In summary, I reiterate that, to allow Federal employees virtually unlimited partisan political activity by the passage of this bill would:

First. Be a great disservice to the 2.8 million Federal civil service employees;

Second. Inevitably introduce partisan consideration into the administration of Federal programs;

Third. Seriously undermine public confidence in the integrity of Government operations;

Fourth. Compromise, in the public's eye, Federal employees who actively participate in partisan politics;

Fifth. Detract from the efficient administration of the public business;

Sixth. Make employees vulnerable to indirect and subtle influences and coercion to support political parties or individuals;

Seventh. Inject political consideration in promotions, decisions, job assignments, and similar actions;

Eighth. Adversely affect employee morale and efficiency;

Ninth. Step backward 70 years to 1907 before President Roosevelt barred political management and campaigning of Federal employees;

Tenth. Eventually emasculate the Hatch Act;

Eleventh. Eventually return to the spoils system; and

Twelfth. Ultimately destroy the merit system in the Federal Government.

I urge the defeat of H.R. 8617.

Mr. MORGAN. Mr. President, I want to say just a word or two about the bill before we cast our final votes.

I think I shall vote for the bill, although I shall do so reluctantly. I have felt for a long time, or for some time, that some changes should be made in the Hatch Act.

I have found through the years that too many Federal employees use the Hatch Act to hide behind, to fail to exercise or as an excuse for not exercising some of their, what I believe to be, civic responsibilities.

I did make the statement during the political campaign in 1974 that I thought some changes should be made. I have to say, in all candor, that I think these changes go far beyond what I had expected. However, on the whole, I suspect I shall vote for it.

I do make one statement for the record with regard to a couple of amendments that were offered which sought to separate the congressional salaries from the employees' salaries. I believe one amendment was offered which would have called upon the President to make a recommendation for employees and a recommendation for Members of Congress. Also, a final one was offered that would have postponed any congressional pay raises, as I understand it, until the next time.

Mr. President, I voted against both of these proposals. For the record—and I guess that is probably the most compelling reason I find to make these remarks—I want the record to reflect that I voted against these proposals because I think, in retrospect, that what we did last year in tying the congressional pay raises to those of other Federal employees was the finest thing that Congress had done in this connection in a long time.

I must say that at the time I did not think so, and I voted against it, but I found that because our own salaries were tied to the recommendations of the President, most Members of Congress stopped and took a second look at those recommendations. There is no doubt in my mind but what we would have granted to the Federal employees the 8.66 percent pay raises last year, which is more than I think the economy would have justified, had we not been subjecting ourselves to the criticism of having voted to raise our own salaries.

So until someone convinces me in the future that I am wrong, I hope we will keep congressional salaries tied to the salaries of Federal employees and we will not give ourselves any more or any less than the salaries paid to the Federal employees.

Mr. President, in my State the per capita income of our people is not very high. In comparison to the per capita income of our workers in North Carolina, the employees of the Federal Government fare very, very well. The people in my State are concerned about it.

So, I think maybe this fact has a sobering effect or will have a sobering effect as we are pressured, especially in an election year, to grant more and more salary raises and more and more benefits. I am not saying we should not do

this. But I am saying that we should do it on the basis of merit and in connection with what the economy will stand and not with regard to how close it is to an election.

So I wanted the record to reflect why I wanted the congressional salaries tied and to remain tied to the salaries of other Federal employees.

I thank the Chair.

Mr. MATHIAS. Mr. President, the Congressional Research Service has made a study of the evolution of Federal policy relating to regulation of political activities.

I ask unanimous consent that that study be printed in the RECORD at this point.

There being no objection, the study was ordered to be printed in the RECORD, as follows:

EVOLUTION OF FEDERAL POLICY RELATING TO THE REGULATION OF POLITICAL ACTIVITIES OF FEDERAL EMPLOYEES PRIOR TO THE HATCH ACT

The question of proscribing the political activity of Federal Government employees was brought up for debate as early as the second session of the First Congress in 1791. During debate in the House of Representatives on a bill to levy an excise tax on distilled spirits, Congressman James Jackson of Georgia proposed an amendment "to prevent Inspectors, or any officers under them, from interfering, either directly or indirectly, in elections, further than giving their own votes, on penalty of forfeiting their office."¹

In the brief debate that followed, Congressman John Vining of Delaware, speaking in opposition to the proposed amendment, asserted that not only would such a proscription unjustly restrict many citizens, but that it also was unconstitutional because it would deprive citizens of their right "of speaking and writing their minds." Jackson rebutted Vining by citing an English law, passed during the reign of William and Mary, to prevent tax officials from interfering in elections. Congressman Fisher Ames then retorted that the English law in question had not been enacted "till the abuses it was intended to remedy has arisen to an enormous height. If ever there should be a necessity for a similar law in this country," Ames continued, "it will then be time enough to make the regulation; but this clause will muzzle the mouths of free men, and take away the use of their reasons." The House defeated the amendment by a vote of 37 to 21.²

In his Farewell Address of 1796, President George Washington warned of the evils of political parties and said that partisanship "serves always to distract the public councils and enfeeble the public administration".³ Thus the desirability of limiting the political activities of Federal civil servants was articulated by a Chief Executive early in the history of the United States and has been advocated by each succeeding President.

President Thomas Jefferson appears to have been the first Chief Executive to have issued directives regarding the political activity of Federal employees. In 1801 Jefferson issued a circular to be distributed to all Government offices which stated in part:

"The President of the United States has seen with dissatisfaction officers of the general government taking on various occasions active parts in the elections of public functionaries, whether of the general or state governments. . . . The right of any officer to give his vote at elections as a qualified citizen is not meant to be restrained, nor, however given, shall it have any effect to his prejudice; but it is expected that he will not attempt to influence the votes of others, nor take any part in the business of electioneering, that being deemed inconsistent with the spirit of the Constitution and his duties to it."⁴

It would seem that Jefferson's directive had little impact, for in a letter of September 8, 1804, to his Secretary of the Treasury, Albert Gallatin, Jefferson penned the following comment:

"I think the officers of the federal government are meddling too much with the public elections. Will it be best to admonish them privately or by proclamation?"⁵

The late 1830's were witness to the next significant period of congressional concern with the matter of Federal employees and political participation. In 1837 a Whig Congressman, John Bell of Tennessee, introduced in the House a bill to prohibit the interference of Federal employees in elections. The bill provided that:

"No officer, agent, or contractor; or other person, holding any office or employment of trust under the Constitution and laws of the United States, shall, by the contribution of money, or other valuable things, or by the use of the franking privilege, or the abuse of any other official privilege or function, or by threats and menaces, or in any other manner, intermeddle with the election of any member or members of either House of Congress, or the President or Vice President of the United States or of the Governor, or other officer of any State, or any member or members of the Legislature of any State."⁶

Violation of the provisions of this measure would constitute a "high misdemeanor," punishable by a fine of not more than \$1,000. The 24th Congress adjourned without taking action on Bell's bill.

Bell reintroduced his bill in the next Congress, but it was never reported out of committee.⁷ A bill similar to Bell's was introduced, during the 25th Congress, in the Senate by John J. Crittenden of Kentucky.⁸

In January, 1839, the Senate Judiciary Committee adversely reported Crittenden's bill. The Committee's report said the bill was "unjust, unequal, impracticable, impolitic, tyrannical, and unconstitutional," for every citizen has the "right of freely examining public characters and measures, and of free communion among the people thereon, by word, message, or writing in any other manner he may judge proper."⁹

For two weeks Crittenden's bill was debated in the Senate, with the Whigs generally supporting the bill and the Democrats opposing

it, John C. Calhoun argued that the bill was unconstitutional because it interfered with States' rights. James Buchanan of Pennsylvania argued that the bill was unconstitutional because it would limit freedom of speech and the press and therefore violate the First Amendment to the Constitution.¹⁰ The bill came to a vote in the Senate on February 27, 1839, and was defeated 28 to 5.¹¹

Senator Crittenden and Representative Bell reintroduced their bills in the 26th Congress. No action was taken in the Senate, and Bell's bill again failed in the House.¹² Congressional action regarding the regulation of the political activities of Federal employees ceased by 1841, primarily, it would seem, because the Whig Party captured the Presidency and Crittenden and Bell became members of the Cabinet.

Another related attempt in Congress to regulate the political activities of Federal workers occurred in 1839. Senator C. W. Rives of Virginia introduced a series of resolutions directed toward limiting the interference of Federal civil servants in elections. The final resolution stated:

"That measures ought to be adopted by Congress, so far as their constitutional powers may extend, to restrain by law all interference of Federal officers with elections, otherwise than by giving their own votes; and that the report of the Judiciary Committee be committed to a select committee, with instructions to now model it according to the principles declared in the foregoing preamble and resolutions."¹³

The vote in the Senate on Rives' resolutions was recorded in the *Congressional Globe* as follows:

"These resolutions, when subsequently acted on, were voted against by all those members of the Senate claiming to be thorough friends of the Administration, and were consequently rejected by a strict party vote."¹⁴

The first extensive statement of Presidential policy on the parameters of political activity for Federal civil servants is contained in a circular to all Cabinet members issued in 1841 by Secretary of State Daniel Webster on instructions from President John Tyler. The circular stated:

"He [the President] therefore directs that information be given to all officers and agents in your department of the public service that partisan interference in popular elections. Whether of State officers or officers of this Government, and for whomsoever or against whomsoever it may be exercised, or the payment of any contribution or assessment on salaries, or official compensation for party or election purposes, will be regarded by him as cause of removal.

"It is not intended that any officer shall be restrained in the free and proper expression and maintenance of his opinions respecting public men or public measures, or in the exercise to the fullest degree of the constitutional right of suffrage. But persons employed under the Government and paid for their services out of the public Treasury are not expected to take an active or officious part in attempts to influence the minds or votes of others, such conduct being deemed inconsistent with the spirit of the Constitu-

tion and the duties of public agents acting under it; and the President is resolved, so far as depends upon him, that while the exercise of the elective franchise by the people shall be free from undue influence of official station and authority, opinion shall also be free among the officers and agents of the Government."¹⁵

The earliest clearly discernible congressional action giving the President authority to issue regulations governing the conduct of Federal employees came in an appropriations act of March 3, 1871 (16 Stat. 514, 515). Section 9 of the act states:

"That the President of the United States be, and he is hereby, authorized to prescribe such rules and regulations for the admission of persons into the civil service of the United States as will best promote the efficiency thereof, and ascertain the fitness of each candidate in respect to age, health, character, knowledge, and ability for the branch of service into which he seeks to enter; and for this purpose the President is authorized to employ suitable persons to conduct said inquiries, to prescribe their duties, and to establish regulations for the conduct of persons who may receive appointments in the civil service."

Under the authority of the March 3, 1871 Act President Grant established the U.S. Advisory Board on the Civil Service, commonly known as the Civil Service Commission. This panel, appointed by President Grant without Senate confirmation, was composed of nine men from public and private life and was chaired by George William Curtis, a writer and civic leader known for his advocacy of civil service reform. The Commission studied the existing Federal personnel policies and issued a report¹⁶ to the President in late 1871. The report contained a series of recommended civil service regulations. In a December 19, 1871, message to the Senate and House of Representatives President Grant declared the recommended regulations to be effective as of January 1, 1872.¹⁷ Of the thirteen civil service rules established by the December 19, 1871, executive action, two concerned the political activities of Federal employees. Rule 11 is particularly significant and reads as follows:

"No head of a Department nor any subordinate officer of the Government shall, as such officer, authorize or permit or assist in levying any assessment of money for political purposes, under the form of voluntary contributions or otherwise, upon any person employed under his control, nor shall any such person pay any money so assessed."¹⁸

Rule 13 officially recognized the long established practice of the President to appoint partisan and politically active persons to the higher advisory and administrative positions in the Federal Government. The rule stated:

"From these rules are excepted the heads of Departments, Assistant Secretaries of Departments, Assistant Attorneys-General, and First Assistant Postmaster-General, Solicitor-General, Solicitor of the Treasury, Naval Solicitor, Solicitor of Internal Revenue, examiner of claims in the State Department, Treasurer of the United States, Register of the Treasury, First and Second Comptrollers of the Treasury, judges of the United States

courts, district attorneys, private secretary of the President, ambassadors and other public ministers, Superintendent of the Coast Survey, Director of the Mint, governors of Territories, special commissioners, special counsel, visiting and examining boards, persons appointed to positions without compensation for services, dispatch agents, and bearers of dispatches."¹⁹

President Grant, however, acknowledged that reasonable limits on the political activities of Cabinet officers and other high government officials also should be recognized in the civil service regulations, especially with regard to higher officials' assessing subordinates for campaign contributions. Therefore, on April 16, 1872, by Presidential direction, the Secretary of State issued Executive Order No. 8 amending civil service Rule 13 in the following manner:

"And the 13th of the Rules adopted on the 19th day of last is amended to read as published herewith. The utmost fidelity and diligence will be expected of all officers in every branch of the public service. Political assessments, as they are called, have been forbidden with the various Departments, and, while the right of all persons in official position to take part in politics is acknowledged and the elective franchise is recognized as a high trust to be discharged by all entitled to its exercise whether in the employment of the government or in private life, honesty and efficiency, not political activity, will determine the tenure of office."

In a letter of May 26, 1877, to Secretary of the Treasury John Sherman, President Rutherford B. Hayes made a strong statement concerning the impermissible political activities of Treasury Department employees. Hayes articulated executive policy as follows:

"No officer should be required or permitted to take part in the management of political organizations, causes, conventions, or election campaigns. Their right to vote and to express their views on public questions, either orally or through the press, is not denied, provided it does not interfere with the discharge of their official duties."²⁰

Apparently the only penalty for prohibited political activity in the Federal civil service prior to the Civil Service Act of 1883 (22 Stat. 403, 406) was removal from office by the President or a Department head. The 1883 Act, however, establishing the concept of an institutionalized civil service merit system for Federal employees, did specify that fines and prison terms could be applied to employees convicted of engaging in certain practices related to the coercing of fellow civil servants for contributions of money or services to political efforts. Sections 11 through 15, which follow, of the 1883 Act remain the basic statutory authority for various Civil Service Commission regulations and congressional measures relating to the control of the political activities of Federal civil servants:

"SEC. 11. That no Senator, or Representative, or Territorial Delegate of the Congress, or Senator, Representative, or Delegate elect, or any officer or employee of either of said houses, and no executive, judicial, military, or naval officer of the United States, and no clerk or employee of any department, branch or bureau of the executive, judicial, or mili-

tary or naval service of the United States, shall, directly or indirectly, solicit or receive, or be in any manner concerned in soliciting or receiving, any assessment, subscription, or contribution for any political purpose whatever, from any officer, clerk, or employee of the United States, or any department, branch, or bureau thereof, or from any person receiving any salary or compensation from moneys derived from the Treasury of the United States.

"SEC. 12. That no person shall, in any room or building occupied in the discharge of official duties by any officer or employee of the United States mentioned in this act, or in any navy-yard, fort, or arsenal, solicit in any manner whatever, or receive any contribution of money or any other thing of value for any political purpose whatever.

"SEC. 13. No officer or employee of the United States mentioned in this act shall discharge, or promote, or degrade, or in manner change the official rank or compensation of any other officer or employee, or promise or threaten so to do, for giving or withholding or neglecting to make any contribution of money or other valuable thing for any political purpose.

"SEC. 14. That no officer, clerk, or other person in the service of the United States shall, directly or indirectly, give or hand over to any other officer, clerk, or person in the service of the United States, or to any Senator or Member of the House of Representatives, or Territorial Delegate, any money or other valuable thing on account of or to be applied to the promotion of any political object whatever.

"SEC. 15. That any person who shall be guilty of violating any provision of the four foregoing sections shall be deemed guilty of a misdemeanor, and shall, on conviction thereof, be punished by a fine not exceeding five thousand dollars, or by imprisonment for a term not exceeding three years, or by such fine and imprisonment both, in the discretion of the court."

On May 7, 1883, President Chester A. Arthur issued the first civil service rules directed toward the implementation of the 1883 Civil Service Act. Several of these rules were specifically related to the continued attempt by the Executive Branch and Congress to regulate the political activities of Federal civil servants. Rules I, II, XXI and XXII represent the Executive Branch's further articulation of a long Presidential administrative policy seeking some control over the political activities of Executive Branch employees. These rules stated that:

RULE I

No person in said service shall use his official authority or influence either to coerce the political action of any person or body or to interfere with any election.

RULE II

No person in the public service shall for that reason be under any obligations to contribute to any political fund or to render any political service, and he will not be removed or otherwise prejudiced for refusing to do so.

RULE XXI

The Civil Service Commission will make appropriate regulations for carrying these

rules into effect.

RULE XXII

Every violation by any officer in the executive civil service of these rules or of the eleventh, twelfth, thirteenth, or fourteenth section of the civil-service act, relating to political assessments, shall be good cause for removal.²¹

The 1883 civil service rules, while prohibiting "interference with any election" did not specifically state to what extent a Federal employee could voluntarily participate in a political campaign or whether Federal civil servants could themselves run for elective office. This uncertainty was somewhat clarified by Executive Order 642 issued by President Theodore Roosevelt on June 3, 1907. The Order, the text of which follows, amended Civil Service Rule I of 1883 to prohibit all political activity of Federal civil servants which related to active participation in political campaigns in a management capacity or as a candidate, whether or not such activity was voluntary:

EXECUTIVE ORDER 642

(June 3, 1907)

Rule I of the Civil Service Rules is hereby amended to read as follows:

No person in the Executive civil service shall use his official authority or influence for the purpose of interfering with an election or affecting the result thereof.

Persons who by the provisions of these rules are in the competitive classified service, while retaining the right to vote as they please and to express privately their opinions on all political subjects shall take no active part in political management or in political campaigns.

The only Democratic President during the civil service reform period of the 1870's and 1880's, Grover Cleveland, issued a memorandum dated July 14, 1886, to departmental heads outlining the policy of his Administration and providing supporting rationale with regard to the limitations on the political activities of Federal civil servants. That memorandum, points of which appeared in President Roosevelt's Executive Order 642, reads as follows:

To the Heads of Departments in the Service of the General Government:

"I deem this a proper time to especially warn all subordinates in the several Departments and all officeholders under the General Government against the use of their official positions in attempts to control political movements in their localities.

"Officeholders are the agents of the people, not their masters. Not only is their time and labor due to the Government, but they should scrupulously avoid in their political action, as well as in the discharge of their official duty, offending by a display of obtrusive partisanship their neighbors who have relations with them as public officials.

"They should also constantly remember that their party friends from whom they have received preferment have not invested them with the power of arbitrarily managing their political affairs. They have no right as officeholders to dictate the political action of their party associates or to throttle freedom of action within party lines by methods

and practices which pervert every useful and justifiable purpose of party organization.

"The influence of Federal officeholders should not be felt in the manipulation of political primary meetings and nominating conventions. The use by these officials of their positions to compass their selection as delegates to political conventions is indecent and unfair; and proper regard for the proprieties and requirements of official place will also prevent their assuming the active conduct of political campaigns.

"Individual interest and activity in political affairs are by no means condemned. Officeholders are neither disfranchised nor forbidden the exercise of political privileges, but their privileges are not enlarged nor is their duty to party increased to pernicious activity by officeholding.

"A just discrimination in this regard between the things a citizen may properly do and the purposes for which a public office should not be used is easy in the light of a correct appreciation of the relation between the people and those intrusted with official place and a consideration of the necessity under our form of government of political action free from official coercion."²²

By 1907 executive and congressional action aimed at regulating the political activity of Federal civil servants had developed into two distinct, but interrelated, thrusts: (1) the protection by civil service laws and regulations of Federal employees from internal or external coercion for involuntary contributions of money and/or services for political ends; and (2) the encouragement of a politically neutral bureaucracy through the prohibition of voluntary political activity related to political campaigning as well as actual candidacy for political office.

As an increasing number of Federal employees were brought under civil service jurisdiction and were thereby forbidden, by Civil Service Rule I, to participate actively in political campaigns, the impact of such a regulation was most perceptible in areas where large concentrations of Federal civil servants resided. The Washington metropolitan area was and remains one such area.

Apparently conceding that civil service regulations restricting the participation of Federal civil servants in local government as elected officials was somewhat contrary to the accepted American principle that the effectiveness and responsiveness of local government is often directly related to the interest and time given by a broad spectrum of the citizenry to the operations of that government, President William H. Taft in 1909 issued the first of two Executive Orders allowing exceptions to Civil Service Rule I. The text of Executive Order 1072 of May 14, 1909 follows:

"Whenever in the opinion of the Secretary of the Navy a strict enforcement of section 1, Rule I of the civil service rules would influence the result of a local election the issue of which materially affects the local welfare of the Government employees in the vicinity of any navy yard or station, the Civil Service Commission may, on recommendation of the Secretary of the Navy, and after such investigation as it may deem necessary, permit the active participation of the employees of the

yard or station in such an election. In the exercise of the privilege which may be conferred hereunder, persons affected must not neglect their official duties nor cause public scandal by their activity."

In an Executive Order of 1912 President Taft made specific geographic exceptions to the proscriptions on local political activity under Civil Service Rule I. However, the permissible activities were in no way to "involve general partisan political activity." The text of Executive Order 1472 dated February 14, 1912 follows:

"Employees of the executive civil service residing in the following incorporated municipalities adjacent to the District of Columbia will not be prohibited from becoming candidates for or holding municipal office in such corporations:

"In Maryland—Takoma Park, Kensington, Garrett Park, Chevy Chase, Glen Echo, Hyattsville, Mount Rainier.

"In Virginia—Falls Church, Vienna, Herndon.

"In the exercise of the privilege granted by this order officers and employees must not neglect their official duties and must not engage in national, state or county political activity in violation of the civil service rules, and if there is such violation the head of the department or independent office in which the person is employed shall inflict such punishment as the Civil Service Commission shall recommend.

"This order, which is recommended by the Civil Service Commission, is based upon the facts that a considerable number of the residents and taxpayers of the towns mentioned are employed in the Government service, that service as municipal officers in such towns should in no way involve general partisan political activity, and that the principle of home rule and local self government justifies such participation."

Presidents Wilson, Harding and Coolidge issued subsequent Executive Orders permitting, by amendment to President Taft's Executive Order 1472, Federal workers to be candidates for or hold local municipal office. In Executive Order 1930, dated May 5, 1914, Wilson added the Maryland municipality of Somerset to the list of areas in which Federal employees could be candidates in local elections. His Executive Order 1947, dated May 26, 1914, made reference to what was apparently considered one valid criterion for permitting Federal employees to be candidates for or to hold local municipal office. The area named in E.O. 1947, North Beach, Maryland, was described in the Order as "a summer resort, practically uninhabited for eight months of the year, it being inhabited during the other four months by residents of Washington, D.C., almost exclusively, the right to vote depending upon the ownership of real estate in the town and not upon residence therein, and that almost twenty-eight percent of the qualified voters are in the executive civil service of the United States."

President Harding in Executive Orders 3597 (December 24, 1921), 3668 (April 29, 1922), and 3860 (June 7, 1923) authorized Federal employees to be candidates for or hold municipal office in Potomac, Virginia, and the Maryland communities of Bladensburg and Brentwood, respectively. President Harding's

successor, Calvin Coolidge, extended similar political privileges to Federal civil servants living in the Maryland municipalities of Berwyn Heights (E.O. 4013, May 19, 1924) and Cottage City (E.O. 4048, July 12, 1924).

President Herbert Hoover in Executive Order 5627, dated May 20, 1931, defined the

conditions under which Federal employees residing in Arlington County, Virginia, might become candidates for or hold local office in that jurisdiction. The full text of this Executive Order follows:

"Officers and employees of the executive civil service permanently residing in Arlington County, Va., may become candidates for and hold local office in such county and may participate in campaigns for election to such offices.

"In the exercise of the privilege granted by this order, officers and employees must not neglect their official duties and must not engage in national or state politics in violation of the civil-service rules. If there is such violation, the head of the department or independent office in which the person is employed shall inflict such punishment as the Civil Service Commission shall recommend.

"Officers and employees elected or appointed to offices requiring full-time service shall resign their positions with the Federal Government. If elected or appointed to offices requiring only part-time service, they may accept and hold same without relinquishing their Federal employment, provided the holding of such part-time office does not conflict or interfere with their official duties as officers or employees of the Federal Government.

"This order is based upon the facts that Arlington County is substantially a municipality, that a considerable number of the residents and taxpayers are employed in the Government service, that service as local officers in such county should in no way involve general partisan political activity, and that the principle of home rule and local self-government justifies such participation.

"The permission granted by this order may be suspended or withdrawn by the Civil Service Commission when, in its opinion, the activities resulting therefrom are, or may become, detrimental to the public interest or inimical to the proper enforcement of the civil-service rules."

The next phase of significant congressional activity related directly to the continued concern of Congress and the Executive Branch in protecting Federal civil servants from political coercion occurred in the New Deal era of the 1930's.

The New Deal was witness to numerous new Federal programs intended to "prime the economic pump" of the Nation and reduce unemployment. Many of these programs were funded through the Works Progress Administration (WPA), a New Deal agency created to increase public works employment in areas of high unemployment. By 1938 the WPA had a budget of \$2.5 billion, and it funded fully or in part over 3,000,000 public works jobs in the States. In 1938 several Members of Congress became increasingly outspoken in their criticisms of alleged widespread financial solicitation by local political party officials from

WPA workers as a condition of continued WPA employment, salary advancement, and favorable job assignments. Many of these local political party officials were reportedly associated with the National Democratic Party and were allegedly drawing salaries as WPA supervisors in many cases. By 1938 the media were giving increasing attention to the political activities of WPA supervisory personnel.

As a result of these allegations of political coercion of WPA workers, Senator Carl Hatch Democrat of New Mexico, made an attempt to amend the Emergency Relief Appropriations Bill of 1938 (H.J. Res. 679) to prevent any person employed by the Federal Government in an administrative capacity from using "his official authority or influence for the purpose of interfering with or influencing a convention, a primary, or other election, or affecting the results thereof." The proposed amendment continued, however, that "any such person shall retain the right to vote

as he pleases, but shall take no active part in political management or in political campaigns." The penalty for violating such prescriptions would be removal from the Federal position held by the violator. Essentially, Senator Hatch's amendment sought to apply to those persons in the WPA the same restrictions imposed by Civil Service Rules I covering Federal employees in the competitive civil service; WPA workers were not so covered. On June 2, 1938, the Senate rejected the Hatch amendment.²³

However, on June 16, 1938, the Senate agreed to S. Res. 290 introduced by Senator Tydings, Democrat of Maryland, directing that an investigation of the alleged use of work-relief funds for political purposes be made by the Special Senatorial Campaign Expenditures and Use of Government Funds Committee which had been created by S. Res. 283 on May 27, 1938. This special Committee was composed of Senators Morris, Sheppard, Democrat of Texas, who served as chairman; David L. Walsh, Democrat of Massachusetts; Pat Harrison, Democrat of Mississippi; Joseph O'Mahoney, Democrat of Wyoming; and Wallace H. White, Jr., Republican of Maine. The findings and recommendations of the Committee, commonly known as the Sheppard Committee after its chairman, were reported to the Senate on January 3, 1939 (S. Rept. 1, 76th Cong.).

The Sheppard Committee's report contained numerous documented cases of political coercion regarding the WPA in ten States. Committee investigators obtained affidavits from WPA workers indicating widespread solicitation of financial contributions from WPA workers by WPA supervisory personnel who were closely associated with local political organizations affiliated, in most cases, with the National Democratic Party. Continued employment on WPA projects, as well as promotions and favorable work assignments, were often contingent, according to these affidavits, upon the purchase of tickets to various fund raising functions or direct financial contributions to local political party organizations.

Although WPA projects were administered jointly by the States and the Federal Government, these projects and the attendant

payrolls were funded primarily by Congress. The Sheppard Committee concluded, therefore, that WPA workers were technically Federal employees, and the Committee in its report submitted recommendations urging legislation to prohibit the political coercion of all Federal employees.²⁴

It is apparent that the Sheppard Committee's report, indicating that certain Federal supervisory employees involved in local party organizations were implicated in the majority of the coercive political contribution complaints the Committee investigated, helped to develop support in Congress for legislation which would prohibit political party activity on the part of Federal employees and protect these same employees from acts of political coercion.

In a January 5, 1939, message to Congress discussing WPA appropriations, President Franklin D. Roosevelt recommended that legislation be enacted to protect WPA employees from coercive political practices. A portion of that message follows:

"It is my belief that improper political practices can be eliminated only by the imposition of rigid statutory regulations and penalties by the Congress, and that this should be done. Such penalties should be imposed not only upon persons within the organization of the Works Progress Administration, but also upon outsiders who have in fact in many instances been the principal offenders in this regard. My only reservation in this matter is that no legislation should be enacted which will in any way deprive workers on the Works Progress Administration program of the civil rights to which they are entitled in common with other citizens."²⁵

The Sheppard Committee's report, the President's message to Congress and the advocacy of political activity restrictions by Senator Hatch and other Members of Congress culminated in the passage of the Hatch Act of 1939 and the 1940 amendments to that Act.

This study does not cover the complicated legislative history of the Hatch Act nor the numerous attempts since 1940 to amend the Act. Rather, its purpose is to give an indication of the ongoing concern for and interest in the broad issue of the permissible parameters of political activity on the part of Federal employees as expressed by United States Presidents and some Members of Congress during the 19th and early 20th centuries.

FOOTNOTES

¹ *Annals of Congress*. 1st Congress, 2d sess., p. 1924.

² *Ibid.*, pp. 1924-27.

³ Richardson, James D. A Compilation of the Messages and Papers of the Presidents (1897 edition). Vol. I: 211.

⁴ *Ibid.* (1899 GPO edition). Vol. X: 98-99.

⁵ Thomas Jefferson Memorial Foundation. *The Writings of Thomas Jefferson*. VI. XI: 49.

⁶ *Congressional Globe*. 24th Cong., 2d sess., p. 124.

⁷ *Congressional Globe*. 25th Cong., 2d sess., pp. 190, 209.

⁸ *Ibid.*, 25th Cong., 2d sess., pp. 189, 221.

⁹ *U.S. Congress. Senate*. Public Documents,

25th Cong., 3d sess., Vol. III, Document No. 168.

¹⁰ *Congressional Globe*, 25th Cong., 3d sess. Appendix, pp. 203-210, 234-237.

¹¹ *Ibid.*, p. 226.

¹² *Congressional Globe*, 26th Cong. 1st sess. Appendix, pp. 829-85.

¹³ U.S. Congress. Senate. Public Documents. 25th Cong. 3rd Sess. Vol. III: Doc. No. 213.

¹⁴ *Congressional Globe*, 25th Cong. 3rd Sess. Appendix, Vol. VII: 409.

¹⁵ Richardson, James D. A Compilation of the Messages and Papers of the Presidents (1897 edition). Vol. IV: 1905.

¹⁶ U.S. Civil Service Commission. The Reform of the Civil Service: A Report to the President. GPO, 1871.

¹⁷ Richardson, James D. Compilation of the Messages and Papers of the Presidents (1897 edition). Vol. IX: 4113.

¹⁸ *Ibid.*

¹⁹ Richardson, James D. A Compilation of the Messages and Papers of the Presidents (1897 edition). Vol. IX: 4113.

²⁰ Richardson, James D. Compilation of the Messages and Papers of the Presidents (1898 GPO edition). Vol. VII: 450.

²¹ Richardson, James D. A Compilation of the Messages and Papers of the Presidents (1897 edition). Vol. X: 4748, 4753.

²² Richardson, James D. A Compilation of the Messages and Papers of the Presidents (1897 edition). Vol. XI: 5079.

²³ *Congressional Record*. 76th Cong., 1st sess. p. 7999-8000.

²⁴ S. Rept. 1. 76th Cong., 1st sess. pp. 39-41.

²⁵ Roosevelt, Franklin D., The Public Papers and Addresses of. 1939 Volume, p. 58.

Mr. MATHIAS. I shall only quote one sentence from it. That is a line from a message to Congress from President Franklin D. Roosevelt of January 5, 1939. In that message President Franklin Roosevelt told our colleagues in Congress:

It is my belief that improper political practices can be eliminated only by the imposition of rigid statutory regulations and penalties by the Congress and that this should be done.

Mr. President, I hope we do not undo it tonight.

SEVERAL SENATORS. Vote! Vote!

ADDITIONAL STATEMENTS SUBMITTED ON
H.R. 8617

Mr. BELLMON. Mr. President, approximately 36 years ago, Congress in its wisdom enacted the Hatch Act. This act is well known to all of us and has stood the test of time. The Hatch Act was born out of the labors of Congress as the result of widespread allegations of corruption of the Federal work force.

The record shows that as a result of these allegations, the Senate created a special investigating committee headed by Senator Sheppard of Texas. The results of the committee's investigation were incorporated in the Sheppard com-

mittee report of January 3, 1939. The report showed numerous documented cases of political coercion of Federal employees for the purpose of soliciting financial contributions. Based on these findings, the Sheppard committee recommended that Congress pass legislation to prohibit political coercion of all Federal employees. The report of the committee, showing such overwhelming evidence of patronage politics, prompted Congress to respond quickly and the Hatch Act was enacted in the same year.

Currently the Hatch Act, in brief permits the following activities:

Federal Employees May:

1. register and vote in any election;
2. express opinion as an individual privately and publicly on political subjects and candidates, display a political picture, sticker, badge or button;
3. make a financial contribution to a political party or organization;
4. participate in the *nonpartisan* activities of a civic, community, social, labor or professional organization, or of a similar organization;
5. be a *member* of a political party or other political organization and participate in its activities to the extent consistent with law;
6. *attend* a political convention, rally, fund-raising function or other political gathering;
7. sign a political petition as an individual;
8. take an active part, as an *independent* candidate, or in support of an independent candidate, in a *nonpartisan* election. In specified municipalities having high concentrations of Federal employees (41 in Maryland, 11 in Virginia, 13 in other states) employees may be independent candidates for and serve in elective office, and as independents may take an active part in political management and campaigns in connection with *partisan* elections for local offices of the municipality or political subdivision;
9. be politically active in connection with a question not specifically identified with a political party (constitutional amendment, referendum, etc.);
10. serve as an election judge or clerk or in a similar position to perform nonpartisan duties;
11. otherwise participate fully in public affairs, except as prohibited by law, in a manner which does not materially compromise efficiency or integrity of an employee or the neutrality, efficiency or integrity of the agency.

The following activities, in brief are prohibited under the current Hatch Act:

Federal employees may not—

1. use official authority or influence for the purpose of interfering with or affecting the result of an election;
2. take an active part in political management or in a political campaign of a *partisan* candidate for public office or political party office;
3. serve as an *officer* of a political party, a *member* of a National, State or local committee of a political party, or an *officer* or *mem-*

ber of a committee of a partisan political club, or be a candidate for any of these positions, organize or reorganize a political party or organization or club;

4. directly or indirectly solicit, receive, collect, handle, disburse or account for assessments, contributions or other funds for a political organization;

5. organize, sell tickets to, promote or actively participate in a fund raising activity of a partisan candidate, political party or club;

6. become a *partisan* candidate for or campaign for an elective public office;

7. solicit votes in support of or in opposition to a partisan candidate for public office or political party office;

8. act as recorder, watcher, challenger, or similar officer at the polls on behalf of a *political party* or *partisan* candidate, drive voters to the polls on behalf of a *political party* or *partisan* candidate;

9. endorse or oppose a partisan candidate for public office or political party office in a political advertisement, a broadcast, campaign literature or similar material;

10. address a convention, caucus, rally or similar gathering of a political party in support of or in opposition to a partisan candidate for public or political party office;

11. serve as a delegate, alternative or proxy to a political party convention;

12. initiate or circulate a partisan nominating petition.

(Source: Code of Federal Regulations, Title 5, Part 733.)

Now after 36 years, the proponents of H.R. 8617 would seek to make changes in the current law. The impact of H.R. 8617, as passed by the House and reported by the Senate Committee, is that the current provisions of the Hatch Act; for example, what Federal employees may and may not do, are totally replaced by provisions in H.R. 8617 which specify only what Federal employees may not do and allows all other political activities.

The net result of the changes would bring on the American people a devastating condition which would have the effect of creating a civil service open to the evils of the old spoils system prevalent before the passage of the Hatch Act.

Let us look at the various contentions of the proponents of H.R. 8617 and analyse them in the face of past experience and common sense. The proponents basic position is that H.R. 8617 is a measure to "restore" the "rights" of Federal civilian and Postal Service employees to participate in the "political process." This position is interesting in light of the fact that in reality, the legislation as proposed would in fact open the entire Federal Government to partisan politics by Federal employees and concentrate excessive political power in the hands of their leaders. The end result of this would not be a "restoration" of "rights" but

rather a "restoration" of "wrongs"; for example, the ability of any leader to force the employee into a position of contributing to and/or participating in the political process whether or not he had the inclination or desire to do so.

The proponents of H.R. 8617 have also advanced the claim that the Hatch Act reduces Federal employees to the status of second-class citizens and that they have been deprived of their first amendment rights of free speech and association.

The language of a recent Supreme Court ruling touches the heart of this claim and rules that argument invalid. In the case of U.S. Civil Service Commission against National Association of Letter Carriers the Supreme Court held that:

A major thesis of the Hatch Act is that to serve this great end of government—the impartial execution of the laws—it is essential that Federal employees not, for example, take formal position in political parties, not undertake to play substantial roles in partisan political tickets. Forbidding activities like these will reduce the hazards to fair and effective government.

There is another consideration in this judgment: It is not only important that the government and its employees in fact avoid practicing political justice, but it is also critical that they appear to the public to be avoiding it, if confidence in the system of representative government is not to be eroded to a disastrous extent.

Prominent leaders in labor and Government have also discussed the second-class citizen allegation:

Robert E. Hampton, Chairman of the U.S. Civil Service Commission, testified before the Senate Post Office and Civil Service Committee that a record number of people in recent years have expressed interest in Federal employment and most of them were well aware of the Hatch Act restrictions on their political activity if they accepted a Federal job. Evidently, these individuals don't think the Hatch Act makes them "second-class citizens," Chairman Hampton said, and the political restrictions are not a deterrent to their seeking Federal employment.

Nathan Wolkovitch, president of the National Federation of Federal Employees, responded to the second-class citizen allegation in the following manner:

Claims that the Hatch Act makes "second-class citizens" of Federal employees is just so much eyewash. Federal employees are not denied reasonable and appropriate participation in the political process. Oddly, many of those who moan most loudly about this moth-eaten cliché fall to exercise the basic and most elementary action of a citizen, namely, to register and vote.

The question must be asked concerning the attitude of the rank and file to the

proposed change in the Hatch Act. The proponents would have us believe that the great hue and cry for this alleged "restoration" of "rights" comes from the Federal employees themselves. The record will show that the rank-and-file Federal employee wants to retain the protection from abuse which the Hatch Act has afforded him for these past 36 years. This conclusion has been reached as the result of impartial surveys conducted by Congressmen on both sides of the aisle and by various organizations to which Federal employees belong.

In addition, the Survey Research Center of the University of Michigan conducted a survey of Federal employees to determine their feeling toward the Hatch Act as it now stands. The category which ranked No. 1 with the highest response was:

The Hatch Act should remain as is; do not favor changes.

Mr. Wolkomir, president of the National Federation of Federal Employees, the largest independent union of career employees testified that his union does not want this or any other change in the Hatch Act. This conclusion was made only after the NFFE conducted a poll of its members which showed that 89 percent expressed strong support for continuing the act "as is." They also unanimously adopted a resolution at their 1974 convention which stated "that the NFFE continue to vigorously oppose efforts to weaken the protection provided by the Hatch Act."

It would seem obvious from these surveys and reports that the average Federal employee, the rank and file employee, does not wish to have the Hatch Act changed.

If the changes proposed by H.R. 8617 are not desired by the rank and file, then where should we go to find the impetus for H.R. 8617? Perhaps Joseph Young, veteran columnist of the Washington Star hit upon the answer when he made this observation:

Federal and postal employee union leaders are all in favor of overhauling the law restricting the political activities of government workers, but it's doubtful that most employees are.

The unions favor overhaul because it would increase their clout with Congress and the political party in power in the White House.

But it would mean the end of the merit system as we know it today.

The attacks on the merit system that occurred during the Nixon administration would be mere child's play compared to what would happen if the Hatch Act were radically changed.

Much has been said and written concerning H.R. 8617 but one of the articles that goes right to the heart of the problem was the statement made by Representative GILBERT GUDE in the December 9, 1976, issue of the Washington Post. I ask unanimous consent that Representative GUDE's remarks be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit No. 1.)

Mr. BELLMON. It is important to note that when the Hatch Act was passed there were 920,000 Federal employees. Today there are 2,800,000. The total budget in 1940 was \$9.5 billion. In 1975 it was \$324 billion. The average salary of a Federal employee in 1939 was \$1,871. Today it is \$14,480. If there was a need for strong restraint that the Hatch Act provided then, there most certainly is more of a need today, for as we know from experience and commonsense, that as our population and payroll grow, so do our problems. H.R. 8617 endangers the protection of Federal employees from political coercion and intimidation presently provided by the Hatch Act.

We should take a long, hard look at H.R. 8617. An analysis of that legislation leaves us with the following conclusions.

H.R. 8617 strips away the protection which Federal employees have enjoyed for more than 36 years. H.R. 8617 will seriously damage the integrity of the merit system and the efficiency of the nonpartisan, independent civil service.

H.R. 8617 would open up the entire Federal Government to partisan politics by Federal employees and concentrate excessive political power in the hands of their leaders.

H.R. 8617 would lead to political favoritism and reinstate the spoils system of the pre-Hatch Act period.

H.R. 8617 makes it most difficult if not impossible to preserve nonpartisan integrity and impartiality of public service and its employees.

Mr. President, at a time when our Government is so in need of the preservation of honesty and integrity, we should do everything in our power to insure that the laws promulgated by this legislative body do not lend themselves to the destruction of that which we seek to build.

Past experience and commonsense tells us that H.R. 8617 should be defeated.

EXHIBIT No. 1

GUDE: "THE HATCH ACT IS WHAT LETS GOVERNMENT WORKERS SAY 'NO' TO PARTISAN DEMANDS FOR TIME AND MONEY AND IMPROPER INFLUENCE OVER GOVERNMENT DECISIONS"

The Hatch Act, essentially, is what lets government workers say "No" to partisan politics, partisan fund solicitations and partisan attempts to sway the day-to-day decisions that affect all our lives.

It is what lets government workers say "No"—and still have their jobs the next day.

Both civil servants and private citizens should tremble at the prospect that the Act will be changed in the way the House has approved. These damages, although still ostensibly barring coercion, would permit government workers to manage and run in partisan elections.

The changes, I believe, will lead to a great deal of subtle coercion, and influence which the government worker may, of course, protest against—but only at great risk to his career. I oppose these changes. I believe I have the strong support of my constituents, who include a vast number of government workers.

Those who support these major changes in the Hatch Act speak of the Act as an over-reaction to isolated abuses in the early New Deal years. Most government agencies, they say, did not have these scandals. It was primarily the Works Progress Administration, a New Deal work-relief agency.

This argument overlooks the fact that the reason the other agencies may have had few problems was that they had long been covered by Civil Service regulations very similar to the Hatch Act.

WPA was not—and the resulting scandals won Thomas L. Stokes a Pulitzer Prize comparable to that won by the Post for its Watergate disclosures.

In a time when minimum wage laws were as low as 25 cents an hour, and when a worker for WPA might get only enough work to make \$17 cash money in a month, the wife of such a worker complained that he was forced to pay \$1 of that meager sum into a political fund.

In another situation, a government boss brought his workers together and said he used to be a Republican but had changed his registration and expected them to do the same.

Another man said he didn't want to sign a petition of support for a particular candidate—and was fired as "uncooperative."

Complaints like these help to fill 120 boxes in the U.S. Archives. These 120 boxes contain the material considered by the Sheppard Investigative Committee formed in 1938 to look into allegations of WPA politicking in 20 states.

As a result of the Stokes and Sheppard disclosures, the Civil Service regulations (which date to the formation of the Civil Service) were put into law—the Hatch Act—which would cover all government workers, like those in WPA, as well as those already covered by Civil Service regulations.

The need for Hatch Act-type rules was recognized in the early days of this republic. President Thomas Jefferson, founder of the Democratic Party, issued an executive order in 1801 that noted with "dissatisfaction" that government workers were becoming active partisans in both federal and state elections. Jefferson said of the government worker:

"It is expected that he will not attempt to influence the votes of others nor take any part in the business of electioneering, that being deemed inconsistent with the spirit of the Constitution and his duties to it."

This principle of our republic has been enunciated again and again, by such men as Secretary of State Daniel Webster (at the direction of President Tyler) and President Theodore Roosevelt.

The principle did not disenfranchise the government worker. Under the earlier executive orders, under the Civil Service regulations and, finally, under our present Hatch Act, government employees can and do register in the party of their choice, or as independents, and vote.

Government workers can express their opinions on all subjects and candidates both privately and publicly, may wear political buttons and put bumper stickers on their cars, and may make campaign contributions if they choose to.

They can be candidates in nonpartisan elections.

But the line is drawn at managing partisan campaigns and running for partisan office. The reasons for this line are clear.

Can you imagine an Internal Revenue Service agent investigating tax fraud while, in the same community, soliciting campaign funds so he or a friend can run for office?

Can you imagine administrative law judges in the Federal Trade Commission working on antitrust suits or consumer protection cases at the same time that one of the judges or a member of the staff is running for partisan office?

Can you imagine a new clerk, eager for promotion, not "rushing to volunteer" money and help in his boss' campaign for office?

The changes approved by the House are designed, say their sponsors, to make Civil Service workers more free. Unfortunately, these changes may "free" him to be coerced, may "free" him to face enormous partisan pressures, and may "free" him to have to put his job on the line in a complaint, against a supervisor seeking political funds.

We know that subtle racial, religious and sexual discrimination is nearly impossible to uncover and adjudicate. Relaxing the Hatch Act will add political discrimination to the list.

Further, the charges will undermine the public's confidence in the neutrality and impartiality of civil servants. In this post-Watergate period, I think that this is the last thing we want to do.

As recently as 1973, the Supreme Court upheld the constitutionality of the Hatch Act. And, as I have mentioned, Presidents as far back as Jefferson felt the spirit of the Constitution actually demanded such restrictions.

I hope that civil servants who appreciate the present protections of the Hatch Act will make their views known to the Senate and the White House—above the voices of a small band of organizers who, frankly, see themselves gaining political clout from the changes.

The Hatch Act is what lets government workers say "No" to partisan demands for

time and money and improper influence over government decisions.

The Senate should say "No" to changes in the Hatch Act. If not, the White House must veto the changes, for the legislation means "Yes" to partisan activity and "Yes" to a wide range of abuses and scandals.

Mr. FANNIN. Mr. President, the Senate now has before it legislation that would drastically revise the provisions of the Hatch Act. As I stated previously, I am opposed to H.R. 8617 for a number of reasons.

The argument advanced by proponents of this legislation is that the restrictions on partisan political activity imposed by the Hatch Act make Federal employees "second-class citizens." Upon cursory examination, this seems to be a most persuasive argument, for it is difficult to justify in a democratic society the denial of full political freedoms to any citizen.

However, a more thorough examination of the intent and effect of the Hatch Act negates this argument. Congressional investigation of the 1936 and 1938 general elections substantiated charges of political coercion of Federal employees. In response, Congress enacted legislation to prevent further recurrence of such abuses.

For more than 35 years, the Hatch Act has performed a twofold function: It has protected our normal political process from subversion by preventing the party in power or any other interest group from using Federal employees to further its own political ends; and it has protected individual Federal employees and the merit system from promotion and reward based on political activity rather than ability.

In that period of time, the Hatch Act has survived numerous challenges, including three before the Supreme Court. It has survived each of these. This present challenge is the most serious, however, for there appears now to be sufficient political momentum and pressure to force through drastic revisions.

For that reason, we must carefully consider the possible consequences of such action. Who stands to benefit from this legislation?

We politicians will, for one. Here, on a silver platter is a new source of campaign contributions and workers. Representative ELIZABETH HOLTZMAN, in her remarks opposing this legislation in the House, stated:

The fourth danger in this bill is illustrated by an argument made by some of its supporters. They have said that the bill will allow Federal employees to demonstrate their gratitude to Members who have been responsive to their needs in the past. Clearly,

some persons see this bill as an effort to obtain additional campaign support in return for past actions on behalf of federal employees.

Are the citizens of this country going to benefit from this kind of mutual back-scratching arrangement? I think not.

Who else stands to benefit? The Federal employee unions—the source of some of the major support for this legislation. A politicized membership, able to make contributions and work in campaigns, will greatly enhance their political clout. Mike Causey wrote in his Washington Post column:

Federal and postal union warchests, now mostly window-dressing items, could become major factors in funding 1976 election races if Congress votes to liberalize the Hatch "no politics" act.

But what of the individual Federal employee? What benefit will he or she realize from passage of this legislation? In my opinion, little or nothing. In exchange for the ability to participate in partisan political campaigns, the Government employee is being exposed to political coercion at the hands of their supervisors, fellow workers, unions and any other individual or interest group that has a voice in their career advancement.

It cannot be denied that these pressures exist and will be used. This was, after all, the reason for passage of the Hatch Act in the first place. The drafters of H.R. 8617 must have been aware of it, for they attempted to write some protections into the bill. However, I believe that these protections will prove ineffective.

Let me illustrate. This legislation contains a provision prohibiting an employee from giving a political contribution to a supervisor. This is obviously a well-intentioned attempt to protect the employee from coercion at the hands of his superior. Now, it does not require great deductive powers to visualize how easily this prohibition can be circumvented.

As a supervisor, I can easily make my employees aware of my political preferences. I can just as easily make them aware of supervisors in other agencies or even fellow employees who happen to be taking contributions for my candidate. I have not violated the law; the employee has not violated the law; but my candidate has received the contribution. The employee now feels comfortable that I will look favorably on his next consideration for advancement.

As I stated earlier, this is the most

serious challenge the Hatch Act has yet had to face. In fact, this piece of legislation appears destined to pass this Congress. As ill-advised as this fact may be, it is even more so with this bill in its present form. For that reason, I believe it to be absolutely necessary that we amend H.R. 8617 to provide as strong as possible protection from coercion of individual employees.

The amendments which we are now considering, introduced by Senator Fong, will take a giant step toward providing that increased protection. To help prevent the kind of abuse I illustrated earlier, these amendments will extend the prohibitions to include a ban on contributions not only to supervisors but to any federal employee. In addition, these amendments will prohibit receiving a contribution from another employee.

These amendments also cover an area not adequately covered in the existing proposal. This involves personal employee involvement in campaigns. In order to prevent employees being coerced into working in campaigns, these amendments expand the definition of a political contribution to include the provision of personal services.

Short of retaining the Hatch Act, these amendments provide the only effective protection against blatant political coercion of Federal employees. It is for that reason that I strongly urge their acceptance and inclusion in the proposal to revise the provisions of the Hatch Act.

Failure to do so will result in a politicized Federal work force that functions to carry out the whims of some political scion rather than the will of the people.

Mr. WEICKER. Mr. President, I will vote against H.R. 8617, which would remove the restrictions on Federal employee participation in elective politics. This cannot help but be a difficult vote for anyone who cherishes political involvement and the rough and tumble world of competitive politics as much as I do. Yet, as long as this type of legislation is presented with virtually none of the required distinctions between Federal employees involved in different types of work, I have no choice. As long as no distinction is drawn between the foot soldiers of the Government and the policymakers whose self-interested foot-dragging could deeply undermine the constitutionally mandated powers of the Presidency, this legislation is bad news for America.

I believe no greater friend of liberty ever existed than Thomas Jefferson, yet he saw the question of any Federal employee participating in partisan politics

as an erosion of our constitutional system. I do not go that far, yet the stern warnings of this champion of liberty demonstrates the seriousness of the dilemma:

It is expected that he (the government employee) will not attempt to influence the votes of others nor take any part in the business of electioneering, that being deemed inconsistent with the spirit of the Constitution and his duties to it.

Frankly, I am amazed that after all this country has experienced of the effects of political partisanship in our Nation's taxing, law enforcement, and similar agencies, that we should be voting today on a bill which paves the way for partisan political activity by the employees of those vital and necessarily nonpolitical agencies.

The fact that efforts had to be made on the floor to exempt from the legislation the more obvious agencies—IRS, CIA, FBI—demonstrates that the committee failed to cope with the legitimate expectation of American citizens that their Government carry out policy in an evenhanded, nonpartisan fashion. Until the proponents of this type of legislation make the necessary effort to delineate those agencies which can be safely and rightly un-Hatched from those that cannot, they will not find me in their corner.

Mr. HANSEN. Mr. President, I cannot support this legislation. The enactment of H.R. 8617, the Federal Employees Political Activities Act, will open the entire Federal Government to partisan politics by Federal employees. The consequence of this legislation will not strengthen our participatory democracy,

as the proponents allege, but instead will increase political coercion and intimidation inside and outside the Federal bureaucracy. This coercion and intimidation will strengthen the political power of a few at the expense of the whole. In the end, political influence will be in fewer hands.

Removal of Hatch Act protections will result in increased political coercion and intimidation of Federal employees by other Federal employees, including their supervisors, and Federal employee labor organizations.

I do not mean to suggest that necessarily coercive, intimidating or other overt tactics will be imposed on an individual if he opposes the candidate or program his superior or union prefers. However, the record is clear; abuses of personal political affiliation and performance were prevalent prior to the enactment of the Hatch Act. During this period, political affiliation determined

whether persons were hired and retained as Government employees. Federal workers were solicited for campaign contributions from their superiors, and those who refused were remembered when it came time for promotions. Government employees were told that their nonattendance at political rallies was inexcusable, and voluntary political participation was translated into compulsory activity, if the employees knew what was good for them.

Mr. President, no one in this Chamber can argue that these pressures were anything less than coercive and an affront to first amendment liberties. The Hatch Act was designed to protect Federal employees from coercive political activity, and to restore their first amendment rights. The Hatch Act provided the framework in which Federal employees were assured true political freedom.

The proponents of the legislation before us assert that while the Hatch Act has minimized political coercion in the Federal service, it has made second-class citizens out of Federal employees. I do not find this to be the situation.

Currently, a Federal employee may register and vote in any election; express his opinion privately and publicly on political subjects and candidates; display a political picture, sticker, badge or button; participate in the nonpartisan activities of a civic, community, social, labor, or professional organization; be a member of a political party and participate in its activities to the extent consistent with the law; attend a political convention, rally, fundraising function, or other political gathering; sign a petition as an individual; be politically active in connection with a question not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance or any other question or issue of a similar character; and serve as an election judge or clerk, or in a similar position to perform nonpartisan duties as prescribed by State or local law.

These do not sound like the permissions granted second-class citizens.

Moreover, there has been no hue and cry on the part of Federal employees

alleging they are second-class citizens and urging the adoption of the legislation before us. The impetus for this bill does not come from Federal employees, but from their union leaders. The record is clear and the studies support that the majority of Federal employees enjoy their Hatch Act protections. Those favoring the repeal of the Hatch Act are primarily the labor organizations representing Government employees who see

their political influence strengthened.

Each year, and especially every Federal election year, thousands of union shop stewards, foremen, and union politics receive "contributions" of money and man-hours from workers all across the country. These contributions are for the express purpose of political campaigns and candidates favorable to the union cause. In and of itself, these contributions are not objectionable. It is only when we get into the area of coercion of an employee that my concern arises. Consider the postal worker who refuses to contribute money or time to the cause and suddenly finds himself working the graveyard shift. Or the worker who files a grievance and finds the union does not pursue his grievance with the vigor it does with others because that worker did not attend the rally, or get his required number of signatures on a petition, or work actively enough or not at all for the union's candidate who last ran for public office.

This is clearly the power the unions want and why they have worked so diligently to get this bill before us. However, unions are not the only ones to gain political power by the repeal of the Hatch Act; Federal supervisory personnel also will be in a position to use direct or subtle coercive influence to further their own political purposes and ideals. A Federal employee will not want to buck his supervisor when his job and career are at stake.

The proponents of the legislation before us argue that the bill prohibits such coercive activity and provides safeguards for such abuse. Mr. President, I believe that these safeguards and prohibitions are not adequate. As the minority views in the Senate report on this legislation so succinctly state:

Who can demonstrate that one was selected because he contributed generously to a campaign the supervisor managed (or union supported)? That another was passed over because he had once sported a button touting the opposition? And if one candidate for a promotion tells his supervisor, when no one else can hear, that the increased salary will make it much easier for him to pitch in come election time, who will ever know?

Clearly, Mr. President it will be extremely difficult to prove coercion and intimidation when it is hidden in the subtleties of the workplace.

The proponents of the legislation then argue despite the difficulty of proof all these possibilities for union and supervisory coercion and influence exist in the private sector. They then assert, under the guise of equality, the Congress should allow these pressures to exist in the public sector. I believe this argument not

only lacks logic, but more importantly, fails to recognize the distinction between the power of private sector employees and the power of the Government.

The origin of power of governmental employees is clearly unique. As John Bolton stated in a recent publication:

When one Federal employee applies political pressure to another, he is in effect applying the power vested in his hands by his position in the Government. That power comes from the general public, conferred upon the government to perform functions on behalf of the citizens.

Accordingly, when a Government supervisor exerts his coercive political influence on a subordinate, the power he exerts is derived from the citizens. The power is vested, by the citizens in that Government official to protect freedoms not subvert them. Additionally, when a supervisor or union exerts coercive influence on a governmental employee, that influence may not only alter that employee's political activity but may affect how that employee applies the governmental power vested in him in his duty to protect and further the public interest.

Not only is the origin and scope of governmental power unique, but compared to private sector, its magnitude is far more pervasive. The coercive use of power by a governmental employee or union on another governmental employee will have a dual effect. The coerced governmental employee will be intimidated in his political and job activity; additionally, the fact of coercion will have a chilling effect on nongovernmental citizens. The coercion of the governmental employee will arise from job insecurity, whereas the nongovernmental citizen's political activity will be chilled for fear of adverse treatment at the hands of politically opposed Federal officials.

Mr. President, if there is a lesson from Watergate, it is that we should strive to assure that the Federal system is not politicized; that Federal employees are not coerced, or subject to subtle intimidation; and, that the nongovernmental citizens are not in fear of governmental retaliation for voicing their political view.

We must strive to keep the Federal worker impartial in the election process or our Government will no longer be responsible to the people, but instead responsible to the causes and candidates of their superiors and union leaders. Certainly, this politicalization of the Federal Government will chill the political activity of all Americans. The result will be the concentration of political power in fewer hands.

Mr. President, I urge the defeat of this legislation.

Mr. DOMENICI. Mr. President, the issue before the Senate is one of critical importance. At issue here is the integrity of civil service system. Regardless of what we all say about the huge, inefficient, faceless bureaucracy, it is, for the most part, filled with honest hard-working people. Our Nation must continue to have a civil service system based on merit and not on political expediency.

The Hatch Act, the prime sponsor for which was the late U.S. Senator Carl

Hatch of New Mexico, was designed to protect Federal workers from undue political harassment by superiors and co-workers. This act was Congress response to the 1939 report of the Special Committee To Investigate Senatorial Campaign Expenditures and Use of Government Funds.

In summarizing its investigations in its report, the committee was most concerned with its finding that there had been widespread solicitation of campaign funds by State and Federal officials from Federal employees and State employees receiving salaries wholly or partially derived from the Federal Treasury. In Kentucky, for example, the committee found that \$70,000 had been raised for the campaign of Governor Chandler from State employees whose salaries had been partly or wholly derived from Federal funds.

The committee also found particular abuses by administrative personnel in the WPA. Specifically they found that in Kentucky, there had been a systematic canvass of certified WPA workers, that workers had been hired and fired on the basis of political affiliation, and that WPA workers had been solicited for political contributions.

Mr. President, these are the type of abuses the Hatch Act was designed to protect. At the time the Hatch Act was enacted there were approximately 900,000 Federal employees of which it was estimated that one-third had received their jobs through patronage. Today, we have 2,904,805 Federal civilian employees. Over 20,000 of these employees reside in my State of New Mexico. They do not want the Hatch Act repealed. I have received phone calls, letters, telegrams, and petitions, the overwhelming number of which request me to vote against this measure.

Mr. President, as Congressman Dirksen said during the debate on the Hatch Act:

Without adequate safeguards for the civil service employee, we are going to foster and approve the most gigantic political machine that is known in any Nation anywhere.

The Hatch Act was entitled, "An act to prevent pernicious political activity." Since 1939, this act has shielded Federal employees from the abuses of ambitious, unscrupulous office seekers, and I feel that it is still vital to the integrity of the civil service system.

The heart of the Hatch Act is section 9(a) which prohibits employees of executive agencies from using their "official authority or influence" to interfere with or affect the results of an election, or from taking "an active part in political management or in political campaigns." Therefore, civilian Federal employees, except for Presidential appointments to any political party, do not need to carry a favor of any political party to receive a promotion, assignment, or any other consideration in Government.

Mr. President, this is as it should be. We have a civil service based on merit. Federal employees receive appointments, promotions, and assignments in the Federal Government on merit and performance. This is the keystone of the merit system.

The Hatch Act does not deny Federal workers their basic rights of citizenship as is claimed by the proponents of H.R. 8617. Federal employees are permitted to express political opinions, make political contributions, engage in nonpartisan election activity, and participate in partisan activity at the local level in areas where many of the workers are Federal employees. I believe that the freer the employees to engage in voluntary political activity, the greater the possibility that they will be coerced into involuntary political activity. In fact, it may be that proscribing certain activities leaves civil servants with more freedoms, not less.

John R. Bolton in his study of the Hatch Act entitled, "The Hatch Act—A Civil Libertarian Defense", said:

Restraints on coercion alone force an employee who believes he is being subjected to such coercion to come forward to complain about it, a highly unlikely prospect if that employee is already in fear of his job or his employment future. The only possibly effective method to eliminate coercion is thus to forbid the activity as well as the intimidation . . . The difference between being able to say "I'm Hatched," and "I don't agree with your candidate and I choose not to work for him," is enormously significant, and the degrees of protection involved are far different.

Mr. President, during the debate on H.R. 8617 Representative ELIZABETH HOLTZMAN stated:

If there is one lesson we should have learned from Watergate, it is that we must strive to reduce, rather than increase, political influence in the Federal law enforce-

ment and investigative agencies. This bill would, instead, authorize and invite the politicizing of the Justice Department, FBI, U.S. Attorney's Offices, and Internal Revenue Service, as well as the CIA, National Security Agency and Defense Intelligence Agency.

The Congresswomen is absolutely correct. Consider if you will the example of an official with the Federal Election Commission ambitions. Will he enforce the criminal provisions of the Federal Election Campaign Act against an incumbent Senator or Representative or other potential opponent, and then run for the same office himself? I am not sure what he would do. I certainly cast no dispersions on employees of the Federal Election Commission, but, this example could equally well apply to civil servants in any Federal regulatory agency.

Of course, proponents say that H.R. 8617 would require Federal workers who become candidates to take a 90-day leave without pay prior to any election in which they are a candidate. However, such workers may utilize accrued annual leave time to engage in political activity in addition to the 90-day leave and the leave provisions do not apply to workers actively engaged in partisan campaigns but who are not themselves candidates.

Mr. President, the Albuquerque Journal, the largest paper in New Mexico has written an editorial on the Hatch Act. I asked unanimous consent that it be inserted in the RECORD at this point. Mr. President, I also ask unanimous consent that the additional editorials from the Farmington Daily Times, the Washington Star News, the Wall Street Journal, and the Federal Employee, the official publication of the National Federation of Federal Employees.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Farmington (N. Mex.) Daily Times, Nov. 4, 1975]

HATCH ACT DOOMED?

Congress, at the insistence of the labor unions, appears to be ready to "gut" the Hatch Act and give the unions more political clout.

The House recently overwhelmingly passed and sent to the Senate a bill that would make sweeping changes in the Hatch Act. That law limiting political activity by the government's 2.8 million employees was passed when the federal bureaucracy began to grow so rapidly during President Franklin Roosevelt's administration in 1939. The Act, whose author was the late U.S. Sen. Carl A. Hatch of New Mexico, was designed to protect federal workers from undue political pressure from superiors and others; and it has worked well in the public interest.

The Ford administration opposes the bill to scuttle the Hatch Act, and so does the Civil Service Commission. But it has re-

ceived vigorous support from labor groups, particularly government workers' labor unions.

Those labor unions would be the principal beneficiary of the law change, since they would be able to take political advantage of the 2.8 million federal workers. But the Democratic Party, which controls Congress, would also expect to benefit, since most federal employees are Democrats.

Incidentally, the House vote was 288 to 119, more than the two-thirds needed to override a presidential veto.

It is frightening to realize that one out of every six American workers is employed by some level of government. Collectively, public employees have become one of the nation's most powerful special interest groups; and the public employee unions are becoming more and more militant, forcing concessions from the taxpayers that are not justified.

In urging Congress not to weaken the Hatch Act, the liberal Albuquerque Journal commented: "Public employees already have the money and manpower to contribute to political campaigns and to greatly influence political decisions. This year, more than 14 million federal, state and local government employees will collect \$135 billion in salaries and fringe benefits. If the Hatch Act is emasculated, we are fearful of the added power public employees could wield over those of us who pay through the nose to support them."

[From the Albuquerque Journal,
Oct. 23, 1975]

DON'T WEAKEN HATCH ACT

The Hatch Act once again is under severe attack by forces which would subject federal Civil Service employees to overt political pressure on their jobs.

The Act, prime sponsor for which was the late U.S. Sen. Carl A. Hatch of New Mexico, was designed to protect federal workers from undue political harassment by superiors and co-workers.

The House of Representatives have voted to relax the restrictions so that federal employees may run for political office or manage political campaigns. Federal employee unions have been campaigning to ease the restrictions so that their members may become more politically active. They argue that the Hatch Act strips federal employees of their rights to participate actively in the political process.

The House bill would bar the use of federal authority to influence political activity and would prohibit political activity by federal workers while they are on the job. It would also require federal workers who are candidates for political office to take a 90-day leave of absence prior to the election in which they are candidates.

Since 1939, the Hatch Act has shielded federal employees from the abuses of ambitious, unscrupulous office seekers. It also has shielded the public from abuses which could be committed by federal employees whose jobs give them information which could be used to politically pressure the public.

More importantly, one out of every six American workers now draws his or her paycheck from some level of government.

Collectively, public employees have emerged as one of the nation's most powerful special interest bodies and as one of the most politically potent forces in America.

Public employees already have the money and manpower to contribute to political campaigns and to greatly influence political decisions. This year, more than 14 million federal, state and local government employees will collect \$135 billion in salaries and fringe benefits.

If the Hatch Act is emasculated, we are fearful of the added power public employees could wield over those of us who pay through the nose to support them.

[From the Wall Street Journal]

SCUTTILING THE HATCH ACT

The overwhelming margin by which the House of Representatives voted to eviscerate Hatch Act restrictions on federal employee participation in politics is being hailed as a giant step forward. It's that all right—for organized labor, which lobbied for it so aggressively in the knowledge it would enhance the political clout of the unions that represent America's approximately 2.8 million federal employees.

The ostensible reason for gutting the Hatch Act is to end "second class citizenship." Since the act was enacted in 1939, federal employees have been forbidden to run for elective office and to campaign for others. Now the House would lift most restrictions, including restrictions on political activity "while on duty" on behalf of the President, Vice President and "White House employees."

If the bill passes the Senate, as it is almost certain to do, House GOP Leader John Rhodes says he will ask President Ford to veto the bill. Mr. Ford would be derelict not to. But the question is whether a veto can be sustained in view of the Democrats' enthusiasm for a bill that everyone agrees will chiefly benefit their party.

The Hatch Act was not passed out of a fiendish desire to burden or stigmatize federal workers. It was passed because FDR's New Deal was trying to politicize the federal work force, to turn it into a potent political machine. It's interesting that so many reformers who denounce Richard Daley's Chicago machine, or who denounced it whenever the mayor failed to put it at the service of "progressive" legislation and candidates, enthusiastically support this effort to raise machine politics to the federal level.

The House capitulation to organized labor is hardly unprecedented, but the timing is certainly curious. Especially since the excesses spawned by government employee unions are now more apparent than ever. Not all New York troubles can be blamed on its municipal employee unions, but the combination of their power and rapacity plus old fashioned political opportunism played a major part in laying the city low.

Now Congress appears intent on duplicating that prescription at the federal level, apparently on the theory that while poison in a small dose may be lethal, a massive dosage may be just what the doctor ordered.

[From the Wall Street Journal, June 24,
1975]

DOWN THE HATCH?

There is a move afoot to repeal or weaken the Hatch Act, the 36-year-old law barring federal employees from taking an active role in political campaigns. The purpose of the bill has been to keep party politics out of government agencies, to prevent a return to the tawdry spoils system. But the federal employee unions are hoping that repeal will add to their already considerable political influence, and so they are busy talking about "freedom" and "second-class citizenship"—talking about everything, in fact, except the problem the Hatch Act was designed to remedy.

Admittedly, the Hatch Act has not eliminated all political influence from the civil service. And its purpose is not, as critics seem to be arguing, to make political eunuchs of federal workers. They are permitted to express political opinions, run for office as independents, contribute money to political campaigns and vote. But you would not know all that to hear Rep. William Clay (D., Mo.), who said the act has had a "chilling effect" on federal employees even to the point of discouraging them from voting.

What federal employees are not permitted to do is perform the nitty-gritty chores associated with partisan political effort—canvass voters, raise money for a political party or campaign for candidates.

This is partly for their own protection as well as to avoid machine politics. It insulates employees against coercion from their bosses. That's why several independent employee unions oppose repeal. Nathan Wolkomir, president of the National Federation of Federal Employees, charged that organized labor's interest in the bill "is nothing more than the old AFL-CIO pitch for muscle and power. It's a move for money and more organizing influence."

In upholding the constitutionality of the Hatch Act two years ago the U.S. Supreme Court noted that one reason for its enactment was the conviction "that the rapidly expanding government work force should not be employed to build a powerful, invincible and perhaps corrupt political machine. The experience of the 1936 and 1938 campaigns convinced Congress that these dangers were sufficiently real that substantial barriers should be raised against the party in power—or the party out of power, for that matter—using the thousands or hundreds of thousands of federal employees, paid for at public expense, to man its political structure and political campaigns."

Today those "hundreds of thousands" of federal employees number somewhere around 2.5 million, which only tends to heighten the potential dangers cited by the high court. The Hatch Act isn't a perfect answer to those dangers, by any means, but its shortcomings are insignificant compared with the drawbacks of repeal.

NFFE WARNS AGAINST PROPOSALS TO WEAKEN HATCH ACT; STEPPED-UP DRIVE COULD PERIL MERIT AND PROTECTIONS

Bills with wide Congressional sponsorship have been introduced in this session to "liberalize" and to "extend the political rights" of Federal employees. President Nathan T. Wolkomir has presented the

strong dissenting views of the NFFE on this legislation at hearings and by direct communications with members of the Senate and House. This editorial sets forth the position of the NFFE on the Hatch Act and an outline of the presentation to the Congress citing the important reasons which underlie our stance on that legislation.

CAN'T HAVE IT BOTH WAYS

Some Federal employee unions and some employees are buying the line that present restrictions on deep Federal worker participation in partisan political campaigns make them "second class citizens," and old and tired cliché which does not square with the facts.

Moreover, supporters of the revisionist legislation are allowing themselves to be lulled into the naïve belief that even if Federal employees do go heavily into political campaigning the provisions of the Hatch Act, which presently protect them from demands for political chores and for political contributions and for active campaign support, will remain intact and undiminished.

This is carrying naïvete to the ultimate. It is an example of "you can eat your cake and have it too." It is in effect a refutation of the ancient and well-proven truth that you can't have it both ways.

The position of the NFFE on the Hatch Act is clear. It has been affirmed and reaffirmed by successive national conventions, by overwhelming and usually unanimous votes. That position favors legislation which will give Federal employees the reasonable and entirely appropriate degree of participation in the democratic electoral process which will make meaningful and practical the protections against political strong-arming which the Hatch Act provides.

Those unions, those employees, and those members of Congress who are pulling all of the levers of publicity and promotion to render the Hatch Act literally toothless evidently are unaware of the reasons why that legislation has been on the statute books for the past 40 years or so.

The NFFE, the National Civil Service League, many members of Congress, and a majority of all career Federal employees long had been profoundly disturbed by the fact that the original Pendleton Civil Service Act of 1883 did not provide protections for employees against strong demands by some legislators or candidates or political managers and bosses for both money and services. They made it plain that unless the employees acceded to these demands their jobs would be at forfeit. And the threat was not an idle one. The NFFE found from its inception in 1917 that employees who took the civil service code of strict nonpartisanship seriously could soon be walking the streets looking for other employment. Or, by some odd coincidence, the long-awaited and well-earned promotion never materialized.

IMPORTANT BACKGROUND

It was to put an end to this odious practice, so inimical to the best interests of the nation as well as the employees—a practice which in effect nullified the whole civil service merit system concept—that the NFFE vigorously and outspokenly supported the Hatch Act, which first became law on August 2, 1939.

Professor Paul P. Van Riper is eminently correct when he notes in his authoritative "History of the U.S. Civil Service" that those who question a substantial basic change in the Hatch Act do so "fearing, perhaps rightly, that any modification of the Hatch acts in favor of an expanded concept of allowable political activity might very well mean only the reintroduction of the old patronage system in one form or another."

And what such "reintroduction" not only could but did mean during the Nixon Administration is confirmed by hearings being held by the House Post Office and Civil Service Committee under the active chairmanship of Rep. David N. Henderson, (N.C.). Those hearings have brought out in fullest detail charges made many months—indeed several years ago—by the NFFE of the implemented plans to subvert the merit system in favor of political spoilsmanship in a wide range of departments and agencies, Washington and throughout the country. The Malek Plan further emphasizes the odious return to uncontrolled political spoils.

NEED IS CLEAR

What is here demonstrated is the need for meaningful administration of the civil service laws, and stronger not weaker protections for the merit principle and for career employees. The large expansion in allowable active partisan political campaigning by Federal employees as called for in legislation now before the Congress—and supported by some shortsighted unions—would inevitably produce a like reduction in the Hatch Act employee protections as is certain as anything can be in the real world.

Moreover, the kind of undercutting of the Hatch Act's objectives implicit in the proposed legislation would without question tend to create an unhealthy atmosphere in which firm, evenhanded and imperative administration of the civil service laws and regulations could not prevail. The Federal establishment would once again be pervaded, from top to bottom, with the kind of partisan political personnel policies which have produced national scandals past and present. And under such circumstances, what would be the effect on Federal workers? The answer can be given in one word: Devastating.

THIS IS NO FAVOR

It is possible and indeed likely that members of Congress who are lending themselves to sponsorship of the pending Hatch Act legislation are doing so in the belief that they are doing Federal workers "a favor" and that they are only trying to give them the rights of all-out political participation enjoyed by American citizens who have not taken the oath sworn by every Federal worker when he becomes an employee of the Government and people of the United States . . . without regard to political party.

But thoughtful Federal workers, and responsible Federal employee unions whose leaders know the facts of real life and are willing to stand up and be counted, will look at this situation with the greatest care . . . and will conclude that there is nothing in the Hatch Act which makes them "second class citizens" . . . and a great deal which is an essential part of their civil service status

. . . and which to date may have kept them from being pushed around.

A long-time and distinguished observer of the Federal scene remarked the other day in Washington when discussing this vitally important subject:

"It is my carefully considered judgment that if the Hatch Act were repealed, or substantially modified, the employees and the unions as well as the members of Congress who supported the changes soon would be in the front rank of those demanding enactment of a new stronger, not weaker law."

Certainly every bit of available evidence, including that unfolding before Chairman Henderson's committee, should provide the most convincing evidence that here is a minefield that employees would do very well to avoid. Federal employees should not be misled by "muscle bound-brass knuckle" approaches to win political favor. They could lead to partisan causes with public employees themselves being blamed for political excesses.

[From the Washington Star] DOWNING THE HATCH ACT

To hear some congressmen and union leaders tell it, there is great wailing and gnashing of teeth among federal employees over the constraints of the Hatch Act. Unfortunately, a majority of the House has bought the argument that these downtrodden workers must be liberated.

Before this thing goes further, we wish a referendum could be taken among the some 2.5 million federal workers on how they really feel about the Hatch Act. We have no doubt that an overwhelming majority would tell their would-be "liberators" to leave them and the Hatch Act alone.

The Hatch Act was enacted in 1939 to protect federal workers from political coercion and to prevent the federal service from becoming a political machine. Besides making it illegal to use "official authority or influence to coerce the political action" of federal employees, it bars the employees from soliciting campaign funds from other federal workers, from using their offices for political purposes, from taking an active part in partisan campaign management and from running for office on a partisan ticket.

The Supreme Court upheld the constitutionality of the act in 1973. The court said it agreed with Congress "that the rapidly expanding government work force should not be employed to build a powerful, invincible and perhaps corrupt political machine."

"The 1936 and 1938 campaigns convinced Congress," the court said, "that these dangers were sufficiently real that substantial barriers should be raised against the party in power—or the party out of power, for that matter—using the thousands or hundreds of thousands of federal employees, paid for at public expense, to man its political structure and political campaigns." Since then the thousands of federal employees have become millions and the effect of turning such a multitude into a political machine would be even more far reaching.

Who is behind this plan to un-Hatch the federal workers? No doubt some of its sponsors in Congress truly feel that public em-

ployees are "second-class" citizens being denied the opportunity to participate more fully in the political process. But the main thrust is coming from union leaders, who feel that the Hatch Act hampers their efforts to turn the federal bureaucracy into a giant union, and who want to use the federal work force to further the political aims of union leadership.

Removing Hatch Act restrictions against political activity is a major goal of the AFL-CIO, whose lobbyists were buttonholing representatives outside the chamber the other day before the House voted 288-119 for a wholesale watering down of the act.

We hope the Senate will see the folly of returning the federal service to a "spoils" system. Surely members of Congress are aware that there is no groundswell among federal workers to get rid of the protection the Hatch Act provides them.

[From the Washington Star, July 27, 1975]

LEAVE FEDERAL SERVICE "HATCHED"

Congress ought to be extremely wary of the move under way to "liberalize" the Hatch Act, which restricts partisan political activities by federal employees. In liberating public servants from what Sen. Gale McGee calls the status of "political eunuchs," the Congress might well deliver a damaging blow to the merit system and endanger the jobs and careers of many of the 2.5 million federal workers.

The Hatch Act now bars federal employees from soliciting campaign funds from fellow workers, from using their offices for political purposes, from taking an active part in partisan campaign management and from running for office on a partisan ticket. They can take part in non-partisan campaigns; and in areas of heavy federal concentration, such as the Washington area, they can run for local office as independent candidates.

A bill sponsored by Rep. William Clay of Missouri and approved by the House Civil Service Committee the other day would all but scrap the Hatch Act. It would allow federal workers to solicit campaign funds, organize political campaigns, publish and distribute partisan literature, attend political conventions as delegates and run for office as partisan candidates. It still would be illegal to carry on political activity in federal buildings or to coerce other employees in political matters. A similar bill has been introduced in the Senate by McGee of Wyoming.

The purpose of the Hatch Act when it was enacted in 1939—a purpose that we consider still valid—was to prevent the politicizing of the federal service. If the Clay-McGee proposals are put into effect, whatever party is in power will be tempted to try to turn the civil service into a political machine. If anyone doubts that idea would occur to politicians, he ought to take a look at the "Malik manual" put out by a Nixon White House aide, which detailed ways to insinuate Nixon loyalists into key government civil service jobs.

For individuals in the federal service, advancement should be based on merit, not politics. Despite the prohibition on coercion in the Clay bill, the pressure would be enormous on the "liberated" employees to follow

the political lead of their bosses if they wanted to get ahead.

There is another danger. Opening the federal service to partisan politics is almost sure to give union leaders more muscle. The Hatch Act tends to inhibit union activity by federal employees and hamper union fund raising. It is no coincidence that the AFL-CIO, to which the biggest of the federal-employee unions belong, is pushing strongly to remove the Hatch Act restrictions. George Meany & Co. would love to be able to enlist or pressure the giant federal service into the AFL-CIO's political causes. The possibility would exist that union leaders, rather than elected officials and top career employees, would be calling the shots in the federal service.

The Hatch Act, despite Senator McGee's fulminations, has not turned federal employees into political eunuchs. They can vote, they can express opinions, they can contribute money to candidates or parties, they can run for local office under certain conditions. They may find that in "liberation," the Congress has traded their Hatch Act protection for a distasteful mess of political porridge.

Mr. DOMENICI. I also would like to urge my colleagues to give favorable consideration to the amendments by the distinguished Senator from Hawaii, amendment No. 1409 which would prohibit Federal employees from running for Federal office or for full-time partisan office at the State and local level.

This amendment is absolutely essential to preserving our federal system of government. We are all aware of the fact that in the almost 40 years since the enactment of the Hatch Act, the power of the Federal Government has greatly expanded.

As I previously stated there were approximately 900,000 Federal employees in 1939 and almost 3 million today. The Federal budget in 1940 was \$9.5 billion as opposed to \$365 billion in 1975. The average salary of a Federal employee in 1939 was \$1,871 as opposed to \$14,480 today.

The Federal Government is vastly larger today than it was in 1939 when the Hatch Act became law—it employs three times more workers and has a budget 34 times larger.

It is particularly important to note that this amendment strictly prohibits "partisan" activity. The political process in America is partisan, and I would not want to change this. However, the governmental process in America is and must remain nonpartisan. There is no room for party politics in the delivery of services, in law enforcement or in the administration of justice. To allow Federal employees who are responsible for these vital functions to become embroiled in party politics would pave the way for the worst kind of abuses imaginable.

Rather than having Federal employees being coerced into political activity, which is another aspect to this debate, we would be putting the American public in jeopardy of having Federal employees use the dispensation of Federal programs as a means of coercing them into party politics.

There is no reasonable contention that prohibition on the partisan activity violates the rights of Federal employees:

A major thesis of the Hatch Act is that to serve this great end of government—the impartial execution of the laws—it is essential that Federal employees not, for example, take formal positions in political parties, not undertake to play substantial roles in partisan political campaigns and not run for office on partisan political tickets. Forbidding activities like these will reduce the hazards to fair and effective government—U.S. vs. National Association of Letter Carriers.

The administration in its objections to the Hatch Act amendments argued against allowing a Federal employee to become a candidate for office without severing his connection with the Government. I cannot imagine a more damaging situation than to have a Federal employee merely on leave of absence to run for Federal office. Aside from the objections raised earlier, as to election to other offices, we would entertain the prospect of Federal employees taking leave to run for office when all their subordinates were fully conscious of the fact that if they won they would be in a position to strongly influence their prior agency and, if they lost, they would be back on the job the day after the election with the power to reward or punish those who had supported or opposed their candidacy.

Mr. President, I urge my colleagues to support this amendment, but in so doing, I wish to make it clear that I have grave reservations about any effort to strip Federal employees of their existing protections against political exploitation.

Mr. THURMOND. Mr. President, I rise in opposition to the pending legislation. This bill would effectively eliminate almost all restrictions on the participation of Federal employees in partisan political activity.

This legislation would permit a flood of partisan political activity by career Federal employees, including political fund raising, political campaign management, and candidacy for public office. Under present law, Federal employees are prohibited from engaging in such partisan activity. I feel the present law must be maintained, not only in order to prevent the emergence of "boss" politics in the Federal work force, but to protect the rights of our Federal work force, and more importantly, the public.

Mr. President, much has been said about the freedoms granted to Federal employees under the bill now before us.

I submit that this legislation will do away with a very important freedom: The freedom to say "No."

The Hatch Act allows Government workers to say "No" to partisan politics, partisan fund solicitations and partisan attempts to sway the day-to-day decisions which affect all our lives. Because of the Hatch Act, these workers can say "No" and still have their jobs the next day. The changes sought to be made in the Hatch Act will lead to a great deal of subtle coercion and influence, which the Government worker may protest against, but only at great risk to his career.

Mr. President, I submit that Federal employees have a first amendment right to be free from coercion, and if H.R. 8617 becomes law, this important freedom will be eroded.

When the Hatch Act was first enacted, employees worried about coercion by their supervisors. While this remains a problem, a potentially far greater problem exists today: Coercion by a union. I feel that coercion by a union is much harder to resist than employer coercion. Unions are better able to carry out a campaign of partisan solicitations and intimidation than a network of supervisors. While public employee unions were not of significant size when the Hatch Act was enacted, their rapid growth has made the Hatch Act even more important.

Mr. President, there is one important freedom which should be discussed, and it is probably the most important freedom to which we must address ourselves. This freedom is the freedom of the public to deal with civil servants without fear of intimidation. The Federal Government has grown so huge that everyone must deal with the Government at one point or another in his life. Members of the public should not have to be concerned about their political opinions or activities when they deal with career Government employees. However, if H.R. 8617 is passed, our citizens will be less willing to speak or associate with others if they know the consequences of such action may be adverse treatment at the hands of Federal officials. In other words, our citizens' first amendment rights will be "chilled."

Mr. President, one of the lessons which we should have learned from Watergate is that we should strive to reduce political influence in Federal agencies. This bill will do just the opposite, and I urge the Senate to defeat it.

Mr. DOLE. Mr. President, the question before this body today is whether or not sufficient reason exists to drastically re-

vise the 36-year-old Hatch Act, which limits the political activity in which an employee of the Federal Government can become involved.

The Hatch Act prohibits public employees, primarily in executive agencies, from: First, using their official authority or influence for the purpose of interfering with or affecting the result of an election; or second, taking an active part in political management or in political campaigns.

The measure was enacted by Congress in 1939 to eliminate some of the unscrupulous practices of political patronage and coercion which had been painfully obvious within the Civil Service System during preceding years, particularly during the period of one-party dominance that existed in the depression era. Commonsense would indicate that elimination of the Hatch Act safeguards against such unethical practices should not be undertaken lightly, nor without substantial basis for the change. In my opinion, there is no persuasive reason at this time for changing or abolishing the protections of the Hatch Act.

The restrictions of the Hatch Act were designed for two purposes: to keep politics out of Government service, and to keep civil servants free from day-to-day political pressures. Our 3½ decades of experience with the act indicate that it is not a perfect solution to the problem of political abuse in our Federal employment system, but there can be no doubt that it has substantially curtailed and prevented the host of unethical practices that naturally tempt every government system. As a "nonpartisan" regulation by nature, the Hatch Act safeguards have applied to members of both major political parties, and have provided continuity of personnel through time regardless of changes in administrations.

The act has served to strengthen the "merit system" by which our Nation's Government employees are hired and promoted, in contrast to the inconsistent and unequal practices of the traditional "spoils system" of Government which characterizes so many political systems throughout the world. Through the years, the Hatch Act has indirectly contributed to maintenance of a certain amount of impartiality and efficiency in the operation of our Federal service establishment. Except for top appointed officials of the Government, no Federal employee owes his or her appointment to any political party, nor is party affiliation a criterion for advancement or assignment.

At the same time, the rank-and-file Federal employee has been protected

from both the obvious and not-so-obvious partisan pressures that would otherwise inevitably flow downward from the administrative and supervisory levels in the civil service system. A variety of opportunities would exist in the course of daily activities to extract political favors and assistance from the Federal labor force should that capability be thrust upon the Government employee, and its use would be limited only by the imagination of the craftiest supervisory bureaucrat who may now or in the future have authority over a portion of the civil service sector.

Intimidation is an ugly tool—it is subtle, it is psychological, and it is powerful. It is also an extremely difficult thing to prevent legislatively. The measure before us today cannot pretend to adequately protect a rank-and-file Federal employee from political intimidation within the bureaucracy, for it eliminates the only effective means of immunity against such coercion. And the resulting situation can only increase public cynicism about our Government operations at a time when confidence in the system is already extremely low.

I was particularly impressed by the testimony earlier this year of Civil Service Commission Chairman Robert E. Hampton, before the Subcommittee on Employee Political Rights in the House, in which he maintained that—

If the opportunity to assert partisan political influence or power is available, it will be exercised. . . . Whatever political activity is permitted to Federal employees will quickly become that which is required of them.

This observation is one of the many reasons why the Civil Service Commission is opposed to the concept contained in the legislation which is before us today.

The Commission is joined in that opposition by a number of Federal agencies and departments, including the Office of Management and Budget, the General Accounting Office, the Departments of Treasury and Justice, and the U.S. Postal Service.

The 10,000-member National Federation of Federal Employees has expressed its strong opposition to this legislation. At their 1974 national convention, NFFE delegates approved a resolution vigorously opposing any weakening of current Hatch Act protections for Federal employees. An informal survey made just last month in my own State of Kansas revealed continued strong support for this resolution by representatives of the 3,000 NFFE members located there.

My communication with rank-and-file Federal employees has produced the in-

escapable conclusion that it is union leadership—not membership—that is the prime motivating force behind legislative change in the Hatch Act.

Federal employees in Kansas, as elsewhere, are generally satisfied with Hatch Act restrictions as they currently exist. They do not find them unnecessarily binding or discriminatory.

But union leaders have nevertheless created for themselves a self-defined "responsibility" to "nudge" Federal employees into the mainstream of political activity. Who do union leaders presume to speak for, and on what basis? Polls of NFFE members have demonstrated virtually non support for Hatch Act revisions. Within recent months, a questionnaire circulated in the 10th Congressional District of Virginia—heavily populated by Government employees—showed that respondents supportive of current Hatch Act provisions outnumbered opponents by nearly 2 to 1.

If Federal-employee union bosses do not speak for employees, then they speak only for themselves.

Only 2 years ago, the constitutionality of the Hatch Act as it currently stands was reviewed by the highest Court in this land. At that time, the Supreme Court reaffirmed unequivocally the constitutional and necessary purposes embodied in this Federal statute:

A major thesis of the Hatch Act is that to serve this great end of government—the impartial execution of the laws—it is essential that Federal employees not, for example, take formal positions in political parties, nor undertake to play substantial roles in partisan political tickets. Forbidding activities like these will reduce the hazards to fair and effective government.

The legislation pending before the Senate at this time would serve to revise this entire concept of the Federal service as being above partisan politics and its attending practices. I am convinced, after reviewing the components of H.R. 8617, that its purported deterrents to political abuse are not adequate to the task. At the same time, I am convinced that the extent of normal political activities already permissible for Federal employees hardly merits the charge that we treat our civil servants as second-class citizens.

The ruckus that has been raised about the second-class status of Federal employees obscures the fact that these 2½ million persons already participate in most of the political activities normally undertaken by the average citizen. Far from being barred by law from engaging in electoral politics, the Government employee today enjoys the right to express political opinions, contribute money to

political campaigns, run for office as an independent, and vote. The restrictions that do exist on certain campaign activities such as endorsing candidates and managing partisan campaigns are intended to keep political promotionism out of civil service operations and to protect the employee from intimidation by his superiors.

Correspondence I receive from Federal workers in my own State of Kansas indicates a commonsense concern that so-called Hatch Act reforms will open the floodgates to unethical political activities within the civil service. Kansas civil servants understand the necessity of retaining protections against office politics and know that there is no basis to allegations that those protections in any way make them second-class citizens.

In reviewing the extensive record of congressional debate on that Hatch bill that took place during 1939, I noted with special interest the remarks of one Kansas Congressman who—along with the overwhelming majority of his colleagues—recognized the true value of these provisions for the integrity of our bureaucracy. Addressing the House in a most eloquent manner then Congressman Edward H. Rees of the Kansas Fourth District advised:

Petty politics have been played more or less in the affairs of our Government for many years. But in recent years and months we have had the rank disclosure of persons in high places and in positions of authority, who have not only exercised their influence, but have manipulated the use of public funds, to foster their own political ambitions. . . .

The time has come—yea, long past due—when this thing must be stopped. Let us do it now, once and for all. Let us see to it that each and every individual who has anything to do with the disbursement or administration of public funds shall have nothing to do concerning the appointment or election of any individual to public office. When you permit the use of public funds, as well as political appointments, to influence and control the elections of individuals to high places, who are to direct the policies and affairs of our Government—at that time you are striking at the very foundation of democracy itself. This Congress still has a chance to prevent the American Government from being controlled by the corruption of a spoils system. Does it have the courage to do it?

Mr. President, I suggest that this Congress has no real mandate to alter the status quo protections of the Hatch Act. Instead of promoting partisan political involvement in the civil service, this body should be concentrating on reducing instances of abuse within the present federal system. Until there is strong and evident support among rank-and-file

Federal employees themselves, it is presumptuous and it is premature for us to initiate major relaxation of Hatch Act protections.

Mr. McGEE. Mr. President, this has been a long debate and a serious one. The Senate is not, however, as some would have it, looking backward. We are looking ahead.

As the Senator from Maryland has pointed out, the Hatch Act has not protected all employees from improper coercion in the past. And, likely, human nature being what it is, some people will violate the provisions of this bill, if it is enacted. But be sure, they will be subject to penalties that will be more sure than has been the case heretofore. For one thing, under this bill employees in the excepted services, as well as career employees, will be subject to the enforcement machinery, and the penalties, of the Civil Service Commission. No more will we see the career employee suspended without pay while his colleague in the excepted service goes scot free because the Commission lacks authority to punish him.

Mr. President, we are told that employees do not want changes in the Hatch Act. We are told that Congressmen GUDE and FISHER, who do represent districts with large numbers of Federal employees, find their constituents opposed. But conflicting testimony comes from Congresswoman SPELLMAN and Congressman HARRIS, who also represent close by districts with large populations of Federal employees.

All along, Mr. President, the issue in this bill has been the restoration of a larger measure of full citizenship rights for 2.8 million Americans. They are responsible people, and they are people who have met the competitive test of the merit system which the Civil Service Commission oversees. They deserve the opportunity to have their voices heard in the political process.

I will not go on at length. I ask unanimous consent to have printed in the Record a list of organizations supporting this bill.

There being no objection, the material was ordered to be printed in the Record, as follows:

PARTIAL LISTING OF ORGANIZATIONS IN SUPPORT OF FEDERAL EMPLOYEES' POLITICAL ACTIVITIES ACT OF 1975—HATCH ACT REFORM
A. Phillip Randolph Institute, Cleveland, Ohio.

American Civil Liberties Union.
American Federation of Government Employees.

American Postal Workers Union.
Americans for Democratic Action, Greater Washington Chapter.

Association of Civil Technicians (National Guard).

International Association of Firefighters.
International Conference of Police Associations.

Laborers International Union of North America.

Montgomery County (Maryland) Congressional Watch.

National Alliance of Postal and Federal Employees.

National Association for the Advancement of Colored People.

National Association of Government Employees.

National Association of Letter Carriers.

National Association of Postal Supervisors.

National Association of Retired Federal Employees, St. Louis, Mo.

National Association of Social Workers.

National Post Office Mailhandlers Union.

National Rural Letter Carriers Association.

National Treasury Employees Union.

New Democratic Coalition.

New York Criminal and Civil Courts Association.

New York Law Journal.

Prince George County (Virginia) Civic Association.

Professional Air Traffic Controllers Organization.

Public Employees Department, AFL-CIO.

Radio Station WMAL, Washington, D.C.

Southern Christian Leadership Conference.

Teamsters Joint Council 13, St. Louis, Mo.

Washington Teachers Union, American

Federation of Teachers, AFL-CIO.

Women's Political Caucus, District of Columbia.

Mr. McGEE. Now, Mr. President, I thank the Senate for its long and serious attention to this bill and the many amendments and ask that we vote passage of this measure and take a big step toward restoring the employees of this Government to full citizenship.

The PRESIDING OFFICER. The bill, having been read the third time, the question is, Shall the bill pass. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. STEVENS (when his name was called). On this vote I have a pair with the Senator from Vermont (Mr. STAFFORD). If he were present and voting, he would vote "nay." If I were permitted to vote, I would vote "yea." I therefore withhold my vote.

Mr. GRIFFIN (after having voted in the negative). On this vote I have a pair with the distinguished Senator from Rhode Island (Mr. PASTORE). If he were present and voting, he would vote "yea." If I were permitted to vote, I would vote "nay." I therefore withdraw my vote.

Mr. MANSFIELD (after having voted in the affirmative). I already have voted in the affirmative. However, I have a pair with the Senator from Idaho (Mr. CHURCH). If he were present and voting, he would vote "yea." If I were permitted to vote, I would vote "nay." I therefore withhold my vote.

Mr. ROBERT C. BYRD. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Idaho (Mr. CHURCH), the Senator from California (Mr. CRANSTON), the Senator from Mississippi (Mr. EASTLAND), the Senator from Alaska (Mr. GRAVEL), the Senator from Hawaii (Mr. INOUE), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Maine (Mr. MUSKIE), the Senator from Rhode Island (Mr.

PASTORE), the Senator from Connecticut (Mr. RIBICOFF), the Senator from California (Mr. TUNNEY), and the Senator from Texas (Mr. BENTSEN) are necessarily absent.

I further announce that the Senator from New Mexico (Mr. MONTOYA) is absent on official business.

I further announce that, if present and voting, the Senator from California (Mr. CRANSTON), and the Senator from California (Mr. TUNNEY) would each vote "yea."

I further announce that, if present and voting, the Senator from Connecticut (Mr. RIBICOFF) would vote "nay."

Mr. GRIFFIN. I announce that the Senator from Arizona (Mr. GOLDWATER), the Senator from Nebraska (Mr. HRUSKA), the Senator from Idaho (Mr. MCCLURE), and the Senator from Illinois (Mr. PERCY) are necessarily absent.

I further announce that the Senator from Vermont (Mr. STAFFORD) is absent due to illness in the family.

I further announce that, if present and voting, the Senator from Arizona (Mr. GOLDWATER), the Senator from Nebraska (Mr. HRUSKA), and the Senator from Illinois (Mr. PERCY) would vote "nay."

The result was announced—yeas 47, nays 32, as follows:

[Rollcall Vote No. 69 Leg.]

YEAS—47

Bayh	Hart, Philip A.	Metcalf
Biden	Hartke	Mondale
Brooke	Haskell	Morgan
Bumpers	Hatfield	Moss
Burdick	Hathaway	Nelson
Byrd, Robert C.	Hollings	Nunn
Cannon	Huddleston	Pell
Case	Humphrey	Randolph
Chiles	Jackson	Schweiker
Clark	Javits	Sparkman
Culver	Johnston	Stevenson
Durkin	Kennedy	Stone
Eagleton	Leahy	Symington
Ford	Magnuson	Talmadge
Glenn	McGee	Williams
Hart, Gary	McIntyre	

NAYS—32

Allen	Fannin	Roth
Baker	Fong	Scott, Hugh
Bartlett	Garn	Scott,
Beall	Hansen	William L.
Bellmon	Helms	Stennis
Brock	Laxalt	Taft
Buckley	Long	Thurmond
Byrd,	Mathias	Tower
Harry F., Jr.	McClellan	Weicker
Curtis	Packwood	Young
Dole	Pearson	
Domenici	Proxmire	

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—3

Stevens, for.
Griffin, against.
Mansfield, against.

NOT VOTING—18

Abourezk	Gravel	Muskie
Bentsen	Hruska	Pastore
Church	Inouye	Percy
Cranston	McClure	Ribicoff
Eastland	McGovern	Stafford
Goldwater	Montoya	Tunney

So the bill (H.R. 8617) was passed.

Mr. MCGEE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. FONG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MCGEE. Mr. President, I ask unanimous consent that the Secretary of

the Senate be authorized to make technical and clerical corrections in the engrossment of the Senate amendments to H.R. 8617

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MCGEE. Mr. President, I move that the Senate insist on its amendments and request a conference with the House and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to and the Presiding Officer (Mr. MORGAN) appointed Mr. MCGEE, Mr. BURDICK, Mr. FONG, and Mr. STEVENS, conferees on the part of the Senate.

94TH CONGRESS
2D SESSION

H. R. 8617

IN THE SENATE OF THE UNITED STATES

MARCH 15, 1976

Ordered to be printed with the amendments of the Senate numbered

AN ACT

To restore to Federal civilian and Postal Service employees their rights to participate voluntarily, as private citizens, in the political processes of the Nation, to protect such employees from improper political solicitations, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **(1) TITLE I—POLITICAL ACTIVITIES OF**
4 **FEDERAL EMPLOYEES**

5 **(2)** ~~That this Act~~ *SEC. 101. This title may be cited as the*
6 *“Federal Employees’ Political Activities Act of 1975”.*

7 **(3)** ~~SEC. 2.~~ *102. (a) Subchapter III of chapter 73 of title 5,*
8 *United States Code, is amended to read as follows:*

II

1 “SUBCHAPTER III—POLITICAL ACTIVITIES

2 “§ 7321. Political participation

3 “It is the policy of the Congress that employees should
4 be encouraged to fully exercise, to the extent not expressly
5 prohibited by law, their rights of voluntary participation in
6 the political processes of our Nation.

7 “§ 7322. Definitions

8 “For the purpose of this subchapter—

9 “(1) ‘employee’ means any individual, including
10 the President and the Vice President, employed or
11 holding office in—

12 “(A) an Executive agency,

13 “(B) the government of the District of
14 Columbia,

15 “(C) the competitive service, or

16 “(D) the United States Postal Service or the
17 Postal Rate Commission;

18 but does not include a member of the uniformed services;

19 “(2) ‘candidate’ means any individual who seeks
20 nomination for election, or election, to any elective office,
21 whether or not such individual is elected, and, for the
22 purpose of this paragraph, an individual shall be deemed
23 to seek nomination for election, or election, to an elective
24 office, if such individual has—

1 “(A) taken the action required to qualify for
2 nomination for election, or election, or

3 “(B) received political contributions or made
4 expenditures, or has given consent for any other
5 person to receive political contributions or make ex-
6 penditures, with a view to bringing about such indi-
7 vidual’s nomination for election, or election, to such
8 office;

9 “(3) ‘political contribution’—

10 “(A) means a gift, subscription, loan, advance,
11 or deposit of money or anything of value, made for
12 the purpose of influencing the nomination for elec-
13 tion, or election, of any individual to elective office
14 or for the purpose of otherwise influencing the re-
15 sults of any election;

16 “(B) includes a contract, promise, or agree-
17 ment, express or implied, whether or not legally
18 enforceable, to make a political contribution for any
19 such purpose; ~~(4) and~~

20 “(C) includes the payment by any person,
21 other than a candidate or a political organization
22 of compensation for the personal services of another
23 person which are rendered to such candidate or po-

1 litical organization without charge for any such
2 purpose: ~~(5)~~ and

3 ~~(6)~~“(D) includes the provision of personal services
4 for the purpose of influencing the nomination for
5 election, or election, or any individual to elective
6 office or for the purpose of otherwise influencing the
7 results of any election:

8 “(4) ‘superior’ means an employee (other than the
9 President or the Vice President) who exercises super-
10 vision of, or control or administrative direction over,
11 another employee;

12 “(5) ‘elective office’ means any elective public of-
13 fice and any elective office of any political party or
14 affiliated ~~(7)~~organization; and organization.

15 ~~(8)~~“(6) ‘Board’ means the Board on Political Ac-
16 tivities of Federal Employees established under section
17 7327 of this title.

18 **“§ 7323. Use of official authority or influence; prohibition**

19 “(a) An employee may not directly or indirectly use
20 or attempt to use the official authority or influence of such
21 employee for the purpose of—

22 “(1) interfering with or affecting the result of any
23 election; or

24 “(2) intimidating, threatening, coercing, command-

1 ing, influencing, or attempting to intimidate, threaten,
2 coerce, command, or influence—

3 “(A) any individual for the purpose of inter-
4 fering with the right of any individual to vote as
5 such individual may choose, or of causing any indi-
6 vidual to vote, or not to vote, for any candidate or
7 measure in any election;

8 “(B) any person to give or withhold any politi-
9 cal contribution; or

10 “(C) any person to engage, or not to engage,
11 in any form of political activity whether or not such
12 activity is prohibited by law.

13 **(9)**“(b) *Nothing in this section authorizes the use by any*
14 *employee of any information coming to him in the course of*
15 *his employment or official duties for any purpose where*
16 *otherwise prohibited by law.*

17 **(10)**~~“(b)~~“(c) For the purpose of subsection (a) of this
18 section, ‘use of official authority or influence’ includes, but is
19 not limited to, promising to confer or conferring any benefit
20 (such as appointment, promotion, compensation, grant, con-
21 tract, license, or ruling), or effecting or threatening to effect
22 any reprisal (such as deprivation of appointment, promotion,
23 compensation, grant, contract, license, or ruling).

1 **“§ 7324. Solicitation; prohibition**

2 **(11)**~~“(A) An~~ “(a) An employee may not—

3 “(1) give or offer to give a political contribution to
4 any individual either to vote or refrain from voting, or to
5 vote for or against any candidate or measure, in any
6 election;

7 “(2) solicit, accept, or receive a political contribu-
8 tion to vote or refrain from voting, or to vote for or
9 against any candidate or measure, in any election;

10 “(3) knowingly give or hand over a political con-
11 tribution to a superior of such employee; or

12 “(4) knowingly solicit, accept, or receive, or be in
13 any manner concerned with soliciting, accepting, or re-
14 ceiving, a political contribution—

15 “(A) from another employee (or a member of
16 another employee’s immediate family) with respect
17 to whom such employee is a superior; or

18 “(B) in any room or building occupied in the
19 discharge of official duties by—

20 “(i) an individual employed or holding
21 office in the Government of the United States,
22 in the government of the District of Columbia,
23 or in any agency or instrumentality of the
24 foregoing; or

25 “(ii) an individual receiving any salary or

1 compensation for services from money derived
2 from the Treasury of the United States.

3 **(12)**“(b) *In addition to the prohibitions of subsection (a),*
4 *an employee of the Internal Revenue Service, the Justice*
5 *Department, or the Central Intelligence Agency (except*
6 *one appointed by the President, by and with the advice and*
7 *consent of the Senate), may not request or receive from, or*
8 *give to, an employee, a Member of Congress, or an officer*
9 *of a uniformed service a political contribution.*

10 **“§ 7325. Political activities on (13) ~~duty, etc.,~~ duty; pro-**
11 **hibition**

12 “(a) An employee may not engage in political ac-
13 tivity—

14 “(1) while such employee is on duty,

15 “(2) in any room or building occupied in the dis-
16 charge of official duties by an individual employed or
17 holding office in the Government of the United States,
18 in the government of the District of Columbia, or in
19 any agency or instrumentality of the foregoing, or

20 “(3) while wearing a uniform or official insignia
21 identifying the office or position of such employee.

22 “(b) The provisions of subsection (a) of this section
23 shall not apply to—

24 “(1) the President and the Vice President;

25 “(2) an individual—

1 “(A) paid from the appropriation for the
2 White House Office,

3 “(B) paid from funds to enable the Vice Presi-
4 dent to provide assistance to the President, or

5 “(C) on special assignment to the White House
6 Office,

7 unless such individual holds a career or career-condi-
8 tional appointment in the competitive service; or

9 “(3) the Mayor of the District of Columbia, the
10 Chairman or a member of the Council of the District of
11 Columbia, as established by the District of Columbia
12 Self-Government and Governmental Reorganization Act.

13 **(14)**“(c) *Nothing in this section shall be construed to au-*
14 *thorize an individual designated in subsection (b)(2) to*
15 *engage in political activity.*

16 **(15)**“(d) (1) *In addition to the prohibitions of subsection*
17 *(a), an employee of the Internal Revenue Service, the Jus-*
18 *tice Departments, or the Central Intelligence Agency (except*
19 *one appointed by the President, by and with the advice and*
20 *consent of the Senate, who determines policies to be pursued*
21 *by the United States in the nationwide administration of*
22 *Federal laws) may not take an active part in political man-*
23 *agement or political campaigns unless such part—*

24 “(A) *is in connection with (i) an election and*
25 *preceding campaign if none of the candidates is to be*

1 *nominated or elected at that election as representing a*
 2 *party any of whose candidates for Presidential elector*
 3 *received votes in the last preceding election at which*
 4 *Presidential electors were selected, or (ii) a question*
 5 *which is not specifically identified with a National or*
 6 *State political party or political party of a territory or*
 7 *possession of the United States; or*

8 *“(B) is permitted by regulations prescribed by the*
 9 *Civil Service Commission and involves the municipality*
 10 *or political subdivision in which such employee resides,*
 11 *when—*

12 *“(i) the municipality or political subdivision is*
 13 *in Maryland or Virginia and in the immediate vicin-*
 14 *ity of the District of Columbia, or is a municipality*
 15 *in which a majority of voters are employed by the*
 16 *Government of the United States; and*

17 *“(ii) the Commission determines that because*
 18 *of special or unusual circumstances which exist in*
 19 *the municipality or political subdivision it is in the*
 20 *domestic interest of the employees to permit political*
 21 *participation.*

22 *“(2) For the purpose of this subsection, the phrase ‘an*
 23 *active part in political management or in political campaigns’*
 24 *means those acts of political management or political cam-*
 25 *paigning which were prohibited on the part of employees in*

1 *the competitive service before July 19, 1940, by the deter-*
 2 *minations of the Civil Service Commission under the rules*
 3 *prescribed by the President.*

4 **“§ 7326. Leave for candidates for elective office**

5 **(16)**“(a)-(1) An employee who is a candidate for elective
 6 office shall, upon the request of such employee, be granted
 7 leave without pay for the purpose of allowing such employee
 8 to engage in activities relating to such candidacy.

9 “(2) Any employee who is a candidate for elective
 10 office shall be placed on leave without pay effective begin-
 11 ning on whichever of the following dates is the later:

12 “(A) the 90th day before any election (including
 13 a primary election, other than a primary election in
 14 which such employee is not a candidate) for that elec-
 15 tive office; or

16 “(B) the day following the date on which the
 17 employee became a candidate for elective office.

18 Such leave shall terminate on the day following the election
 19 or the day following the date on which the employee is no
 20 longer a candidate for elective office, whichever first occurs.

21 The preceding sentence shall not apply to the extent an em-
 22 ployee is otherwise on leave. The Civil Service Commission
 23 shall, upon application, exempt from the application of this
 24 paragraph any employee who is a candidate for any part-
 25 time elective office.

1 ~~(17)~~~~“(b) “(a)~~ Notwithstanding section 6302 (d) of this
 2 title, an employee who is a candidate for elective office shall,
 3 upon the request of such employee, be granted accrued an-
 4 nual leave for the purpose of allowing such employee to en-
 5 gage in activities relating to such candidacy. ~~(18)~~~~Such leave~~
 6 shall be in addition to leave without pay of such employee
 7 under subsection ~~(a)~~ of this section.

8 ~~(19)~~~~“(c) “(b)~~ An employee shall promptly notify the
 9 agency in which he is employed upon becoming a candidate
 10 for elective office and upon the termination of such candidacy.

11 ~~(20)~~~~“(d) “(c)~~ The ~~(21)~~~~foregoing~~ provisions of this section
 12 shall not apply in the case of an individual who is an em-
 13 ployee by reason of holding an elective public office.

14 **~~(22)~~“§ 7327. Board on Political Activities of Federal**
 15 **Employees**

16 ~~“(a)~~ There is established a board to be known as the
 17 Board on Political Activities of Federal Employees. It shall
 18 be the function of the Board to hear and decide cases regard-
 19 ing violations of sections 7323, 7324, and 7325 of this title.

20 ~~“(b)~~ The Board shall be composed of 3 members,
 21 appointed by the President, by and with the advice and
 22 consent of the Senate. One member shall be designated by
 23 the President as Chairman of the Board.

24 ~~“(c)~~ Members of the Board shall be chosen on the basis
 25 of their professional qualifications from among individuals

1 who, at the time of their appointment, are employees (as
 2 defined under section 7322(1) of this title), except that
 3 not more than 2 individuals of the same political party may
 4 be appointed as members. Employees of the Civil Service
 5 Commission shall be ineligible to be appointed to or to hold
 6 office as members of the Board.

7 “(d) (1) Members of the Board shall serve a term of 3
 8 years, except that of the members first appointed—

9 “(A) the Chairman shall be appointed for a term of
 10 3 years,

11 “(B) one member, designated by the President,
 12 shall be appointed for a term of 2 years, and

13 “(C) one member, designated by the President,
 14 shall be appointed for a term of 1 year.”

15 An individual appointed to fill a vacancy occurring other
 16 than by the expiration of a term of office shall be appointed
 17 only for the unexpired term of the member such individual
 18 will succeed. Any vacancy occurring in the membership of
 19 the Board shall be filled in the same manner as in the case
 20 of the original appointment.

21 “(2) If an employee who was appointed as a member
 22 of the Board is separated from service as an employee he
 23 may not continue as a member of the Board after the 60-
 24 day period beginning on the date so separated.

25 “(e) The Board shall meet at the call of the Chairman.

1 “(f) All decisions of the Board with respect to the
2 exercise of its duties and powers under the provisions of this
3 subchapter shall be made by a majority vote of the Board.

4 “(g) A member of the Board may not delegate to any
5 person his vote nor, except as expressly provided by this
6 subchapter, may any decisionmaking authority vested in the
7 Board by the provisions of this subchapter be delegated to
8 any member or person.

9 “(h) The Board shall prepare and publish in the Fed-
10 eral Register written rules for the conduct of its activities;
11 shall have an official seal which shall be judicially noticed;
12 and shall have its office in or near the District of Columbia
13 (but it may meet or exercise any of its powers anywhere
14 in the United States).

15 “(i) The Civil Service Commission shall provide such
16 clerical and professional personnel, and administrative sup-
17 port, as the Chairman of the Board considers appropriate
18 and necessary to carry out the Board's functions under this
19 subchapter. Such personnel shall be responsible to the Chair-
20 man of the Board.

21 “(j) The Administrator of the General Services Ad-
22 ministration shall furnish the Board suitable office space ap-
23 propriately furnished and equipped, as determined by the
24 Administrator.

1 “(1) Members of the Board shall receive no addi-
2 tional pay on account of their service on the Board.

3 “(2) Members shall be entitled to leave without loss of
4 or reduction in pay, leave, or performance or efficiency rat-
5 ing during a period of absence while in the actual perform-
6 ance of duties vested in the Board.

7 “§ 7327. *Functions of the Commission*

8 “*It shall be the function of the Civil Service Commission*
9 *to hear and decide cases regarding violations of sections 7323,*
10 *7324, and 7325 of this title.*

11 “§ 7328. *Investigation; procedures; hearing*

12 “(a) The Civil Service Commission shall investigate
13 reports and allegations of any activity prohibited by section
14 7323, 7324, or 7325 of this title. Any such investigation
15 shall terminate not later than 90 days after the date of its
16 commencement, except that such 90-day limitation may be
17 extended upon the written ~~(23)approval of the Board for~~
18 ~~the period specified in such approval.~~ *determination of*
19 *the Commission.* If the Commission does not make the notifi-
20 cation required under subsection (c) of this section before
21 the close of the period for investigation, subsections (c)
22 (2) and (3) and (d) of this section, and section 7329
23 of this title, shall not apply thereafter to the employee
24 involved with respect to the activities under investigation.

25 “(b) As a part of the investigation of the activities of

1 an employee, the Commission shall provide such employee
 2 an opportunity to make a statement concerning the matters
 3 under investigation and to support such statement with any
 4 documents the employee wishes to submit. An employee of
 5 the Commission lawfully assigned to investigate a violation
 6 of this subchapter may administer an oath to a witness
 7 attending to testify or depose in the course of the investi-
 8 gation.

9 “(c) (1) If it appears to the Commission after investi-
 10 gation that a violation of section 7323, 7324, or 7325 of
 11 this title has not occurred, it shall so notify the employee
 12 and the agency in which the employee is employed.

13 “(2) Except as provided in paragraph (3) of this sub-
 14 section, if it appears to the Commission after investigation
 15 that a violation of section 7323, 7324, or 7325 of this title
 16 has occurred, the Commission shall ~~(24) submit to the Board~~
 17 ~~and serve upon the employee (25) a notice by certified~~
 18 ~~mail; return receipt requested a written notice by certified~~
 19 ~~mail~~ (or if notice cannot be served in such manner, then
 20 by any method calculated to reasonably apprise the
 21 employee) —

22 “(A) setting forth specifically and in detail the
 23 charges of alleged prohibited activity;

24 “(B) advising the employee of the penalties pro-
 25 vided under section 7329 of this title;

1 “(C) specifying a period of not less than 30 days
 2 within which the employee may file with the ~~(26)Board~~
 3 *Commission* a written answer to the charges in the man-
 4 ner prescribed by rules issued by the ~~(27)Board~~; *Com-*
 5 *mission*; and

6 “(D) advising the employee that unless the em-
 7 ployee answers the charges, in writing, within the time
 8 allowed therefor, the ~~(28)Board~~ *Commission* is author-
 9 ized to treat such failure as an admission by the employee
 10 of the charges set forth in the notice and a waiver by the
 11 employee of the right to a hearing on the charges.

12 “(3) If it appears to the Commission after investigation
 13 that a violation of section 7323, 7324, or 7325 of this title
 14 has been committed by—

15 “(A) the Vice President;

16 “(B) an employee appointed by the President by
 17 and with the advice and consent of the Senate;

18 “(C) an employee whose appointment is expressly
 19 required by statute to be made by the President;

20 “(D) the Mayor of the District of Columbia; or

21 “(E) the Chairman or a member of the Council of
 22 the District of Columbia, as established by the District
 23 of Columbia Self-Government and Governmental Reor-
 24 ganization Act;

25 the Commission shall refer the case to the Attorney General

1 for prosecution under title 18, and shall report the nature and
 2 details of the violation to the President and to the Con-
 3 gress.

4 “(d) (1) If a written answer is not ~~(29)~~^{duly} filed
 5 within the time allowed therefor, the ~~(30)~~^{Board} *Commission*
 6 may, without further proceedings, issue its final decision and
 7 order.

8 “(2) If an answer is ~~(31)~~^{duly} ~~filed~~, *filed within the*
 9 *time allowed* the charges shall be determined by the ~~(32)~~
 10 ~~Board~~ *Commission* on the record after a hearing conducted
 11 by a hearing examiner appointed under section 3105 of this
 12 title, and, except as otherwise expressly provided under this
 13 subchapter, in accordance with the requirements of sub-
 14 chapter II of chapter 5 of this title, notwithstanding any
 15 exception therein for matters involving the tenure of an
 16 employee. The hearing shall be commenced within 30 days
 17 after the answer is filed with the ~~(33)~~^{Board} *Commission*
 18 and shall be conducted without unreasonable delay. As soon
 19 as practicable after the conclusion of the hearing, the exam-
 20 iner shall serve upon the ~~(34)~~^{Board}, the ~~Commission~~, and
 21 *Commission* and the employee such examiner's recom-
 22 mended decision with notice to the Commission and the
 23 employee of opportunity to file with the ~~(35)~~^{Board}, *Com-*
 24 *mission*, within 30 days after the date of such notice, excep-

1 tions to the recommended decision. The (36)~~Board~~ *Com-*
 2 *mission* shall issue its final decision and order in the proceed-
 3 ing no later than 60 days after the date the recommended
 4 decision is served. The employee shall not be removed from
 5 active duty status by reason of the alleged violation of this
 6 subchapter at any time before the effective date specified by
 7 the (37)~~Board~~ *Commission*.

8 “(e) (1) At any stage of a proceeding or investigation
 9 under this subchapter, the (38)~~Board~~ *Commission* may, at
 10 the written request of (39)~~the Commission~~ or the employee,
 11 require by subpoena the attendance and testimony of witnesses
 12 and the production of documentary or other evidence relating
 13 to the proceeding or investigation at any designated place,
 14 from any place in the United States or any territory or pos-
 15 session thereof, the Commonwealth of Puerto Rico, or the
 16 District of Columbia. Any member of the (40)~~Board~~ *Com-*
 17 *mission* may issue subpoenas and members of the (41)~~Board~~
 18 *Commission* and any hearing examiner authorized by the
 19 (42)~~Board~~ *Commission* may administer oaths, examine wit-
 20 nesses, and receive evidence. In the case of contumacy or
 21 failure to obey a subpoena, the United States district court for
 22 the judicial district in which the person to whom the subpoena
 23 is addressed resides or is served may, upon application by the
 24 (43)~~Board~~ *Commission*, issue an order requiring such per-
 25 son to appear at any designated place to testify or to produce

1 documentary or other evidence. Any failure to obey the or-
 2 der of the court may be punished by the court as a contempt
 3 thereof.

4 “(2) The ~~(44)Board~~ *Commission* (or a member des-
 5 ignated by the ~~(45)Board~~ *Commission*) may order the
 6 taking of depositions at any stage of a proceeding or in-
 7 vestigation under this subchapter. Depositions shall be taken
 8 before an individual designated by the ~~(46)Board~~ *Commis-*
 9 *sion* and having the power to administer oaths. Testimony
 10 shall be reduced to writing by or under the direction of the
 11 individual taking the deposition and shall be subscribed by
 12 the deponent.

13 “(3) (A) After requesting in writing and obtaining
 14 the approval of the Attorney General, the ~~(47)Board~~ *Com-*
 15 *mission* may determine that an employee’s attendance and
 16 testimony are necessary to the carrying out of the ~~(48)~~
 17 ~~Board’s~~ *Commission’s* functions under this subchapter. For
 18 purposes of the preceding sentence, if the Attorney General
 19 does not notify the ~~(49)Board~~ *Commission* in writing within
 20 30 days after the date on which a request for such approval
 21 is made that the ~~(50)Board~~ *Commission* does not have his
 22 approval, then such approval is deemed to have been given.
 23 Such 30-day period shall be extended an additional 10 days
 24 if the Attorney General submits in writing to the ~~(51)~~
 25 ~~Board~~ *Commission* the reason for such extension.

1 “(B) If the ~~(52)Board~~ *Commission* makes a determi-
 2 nation under subparagraph (A) with respect to any em-
 3 ployee, such employee may not be excused from attending
 4 and testifying or from producing documentary or other evi-
 5 dence in obedience to a subpoena of the ~~(53)Board~~ *Com-*
 6 *mission* on the ground that the testimony or evidence re-
 7 quired of the employee may tend to incriminate the em-
 8 ployee or subject the employee to a penalty or forfeiture
 9 for or on account of any transaction, matter, or thing con-
 10 cerning which the employee is compelled to testify or pro-
 11 duce evidence. No employee shall be prosecuted or sub-
 12 jected to any penalty or forfeiture for or on account of any
 13 transaction, matter, or thing concerning which the employee
 14 is compelled under this paragraph, after having claimed the
 15 privilege against self-incrimination, to testify or produce
 16 evidence, nor shall testimony or evidence so compelled be
 17 used as evidence in any criminal proceeding against the
 18 employee in any court, except that no employee shall be
 19 exempt from prosecution and punishment for perjury com-
 20 mitted in so testifying.

21 “(f) An employee upon whom a penalty is imposed by
 22 an order of the ~~(54)Board~~ *Commission* under subsection
 23 (d) of this section may, within 30 days after the date on
 24 which the order was issued, institute an action for judicial
 25 review of the ~~(55)Board's~~ *Commission's* order in the United

1 States District Court for the District of Columbia or in the
 2 United States district court for the judicial district in which
 3 the employee resides or is employed. The institution of an
 4 action for judicial review shall not operate as a stay of the
 5 ~~(56)Board's~~ *Commission's* order, unless the court specifically
 6 orders such stay. A copy of the summons and complaint
 7 shall be served as otherwise prescribed by law, and, in
 8 addition, upon the ~~(57)Board~~. ~~Thereupon the Board shall~~
 9 ~~certify~~ *Commission which shall then certify*, and file with the
 10 court the record upon which the ~~(58)Board's~~ *Commission's*
 11 order was based. If application is made to the court for
 12 leave to adduce additional evidence, and it is shown to the
 13 satisfaction of the court that the additional evidence may
 14 materially affect the result of the proceeding and that there
 15 were reasonable grounds for failure to adduce the evidence
 16 at the hearing conducted under subsection (d) (2) of this
 17 section, the court may direct that the additional evidence
 18 be taken before the ~~(59)Board~~ *Commission* in the manner
 19 and on the terms and conditions fixed by the court. The
 20 ~~(60)Board~~ *Commission* may modify its findings of fact or
 21 order, in the light of the additional evidence, and shall file
 22 with the court such modified findings or order. The
 23 ~~(61)Board's~~ *Commission's* findings of fact, if supported by
 24 substantial evidence, shall be conclusive. The court shall
 25 affirm the ~~(62)Board's~~ *Commission's* order if it determines

1 that it is in accordance with law. If the court determines
2 that the order is not in accordance with law—

3 “(1) it shall remand the proceeding to the
4 ~~(63)Board~~ *Commission* with directions either to enter
5 an order determined by the court to be lawful or to take
6 such further proceedings as, in the opinion of the court,
7 are required; and

8 “(2) it may assess against the United States rea-
9 sonable attorney fees and other litigation costs reason-
10 ably incurred by the employee.

11 “(g) The Commission ~~(64)or the Board~~, in its discre-
12 tion, may proceed with any investigation or proceeding
13 instituted under this subchapter notwithstanding that the
14 Commission or the head of an employing agency or depart-
15 ment has reported the alleged violation to the Attorney Gen-
16 eral as required by section 535 of title 28.

17 **(65)“§ 7329. Penalties**

18 “~~(a)~~ Subject to and in accordance with section 7328
19 of this title, an employee who is found to have violated
20 any provision of section 7323, 7324, or 7325 of this title
21 shall, upon a final order of the Board, be—

22 “~~(1)~~ removed from such employee's position, in
23 which event that employee may not thereafter hold any
24 position ~~(other than an elected position)~~ as an em-

1 ployee (as defined in section 7322(1) of this title) for
2 such period as the Board may prescribe;

3 ~~“(2) suspended without pay from such employee’s~~
4 ~~position for such period as the Board may prescribe; or~~

5 ~~“(3) disciplined in such other manner as the Board~~
6 ~~shall deem appropriate.~~

7 **“§ 7329. Penalties**

8 “(a) *Subject to and in accordance with section 7328 of*
9 *this title, an employee who is found to have violated any*
10 *provision of—*

11 “(1) *section 7323 of this title shall, upon a final*
12 *order of the Commission, be suspended without pay from*
13 *such employee’s position for a period not less than ninety*
14 *days, or shall be permanently removed in which event*
15 *that employee may not thereafter hold any position (other*
16 *than an elected position) as an employee (as defined in*
17 *section 7322(1) of this title);*

18 “(2) *section 7324 or 7325 of this title shall, upon a*
19 *final order of the Commission, be—*

20 “(A) *removed from such employee’s position, in*
21 *which event that employee may not thereafter hold*
22 *any position (other than an elected position) as an*
23 *employee (as defined in section 7322(1) of this title)*
24 *for such period as the Commission may prescribe;*

“(B) suspended without pay from such employee’s position for such period as the Commission may prescribe; or

“(C) disciplined in such other manner as the Commission shall deem appropriate.

(66)“(b) Subject to and in accordance with section 7328 of this title, an employee who is found to have violated on two occasions any provisions of sections 7323, 7324, and 7325 of this title shall, upon a final order of the Civil Service Commission, be removed from such employee’s position, in which event that employee may not thereafter hold any position (other than an elected position) as an employee (as defined in section 7322(1) of this title).

(67)“(b) “(c) The **(68)**Board shall notify the Commission, Commission shall notify the employee and the employing agency of any penalty it has imposed under this section. The employing agency shall certify to the **(69)**Board Commission the measures undertaken to implement the penalty.

“§ 7330. Educational program; reports

“(a) The Commission shall establish and conduct a continuing program to inform all employees of their rights of political participation and to educate employees with respect to those political activities which are prohibited. The Commission shall inform each employee individually in writing, at least once each calendar year, of such em-

1 ployee's political rights and of the restrictions under this
 2 subchapter. The Commission may determine, for each State,
 3 the most appropriate date for providing information required
 4 by this subsection. Such information, however, shall be pro-
 5 vided to employees employed or holding office in any State
 6 not later than ~~(70)~~60 120 days before the earliest primary
 7 or general election for State or Federal elective office held in
 8 such State.

9 “(b) On or before March 30 of each calendar year, the
 10 Commission shall submit a report covering the preceding
 11 calendar year to the Speaker of the House of Representa-
 12 tives and the President pro tempore of the Senate for referral
 13 to the appropriate committees of the Congress. The report
 14 shall include—

15 (1) the number of investigations conducted under
 16 section 7328 of this title and the results of such investi-
 17 gations;

18 (2) the name and position or title of each individ-
 19 ual involved, and the funds expended by the Commis-
 20 sion, in carrying out the program required under subsec-
 21 tion (a) of this section; and

22 “(3) an evaluation which describes—

23 “(A) the manner in which such program is
 24 being carried out; and

25 “(B) the effectiveness of such program in

1 carrying out the purposes set forth in subsection
2 (a) of this section.

3 **“§ 7331. Regulations**

4 “The Civil Service Commission shall prescribe such
5 rules and regulations as may be necessary to carry out its
6 responsibilities under this subchapter. However, no regula-
7 tion or rule of the Commission or any amendment thereto
8 shall take effect unless—

9 “(1) the Commission transmits such rule, regula-
10 tion, or amendments to the Congress; and

11 “(2) neither House of Congress has disapproved
12 such rule, regulation, or amendment within 30 legisla-
13 tive days from the date of transmittal to the Congress.”.

14 (b) (1) Sections 8332(k) (1), 8706(e), and 8906
15 (e) (2) of title 5, United States Code, are each amended
16 by inserting immediately after “who enters on” the follow-
17 ing: “leave without pay granted under section 7326(a)
18 of this title, or who enters on”.

19 (2) Section 3302 of title 5, United States Code, is
20 amended by striking out “7153, 7321, and 7322” and
21 inserting in lieu thereof “and 7153”.

22 (3) Section 1308(a) of title 5, United States Code,
23 is amended—

24 (A) by inserting “and” at the end of paragraph
25 (2);

1 (B) by striking out paragraph (3) ; and
 2 (C) by redesignating paragraph (4) as paragraph
 3 (3).

4 (4) The second sentence of section 8332 (k) (1) of
 5 title 5, United States Code, is amended by striking out
 6 "second" and inserting "last" in lieu thereof.

7 (5) The section analysis for subchapter III of chapter
 8 73 of title 5, United States Code, is amended to read as
 9 follows:

"SUBCHAPTER III—POLITICAL ACTIVITIES

"Sec.

"7321. Political participation.

"7322. Definitions.

"7323. Use of official authority or influence; prohibition.

"7324. Solicitation; prohibition.

"7325. Political activities on (71) ~~duty, etc.;~~ duty; prohibition.

"7326. Leave for candidates for elective office.

(72) "7327. Board on Political Activities of Federal Employees.

"7327. *Functions of the Commission.*

"7328. Investigation; procedures; hearing.

"7329. Penalties.

"7330. Educational program; reports.

"7331. Regulations."

10 (c) (1) Sections 602 and 607 of title 18, United States
 11 Code, relating to solicitations and making of political con-
 12 tributions, are each amended by adding at the end thereof
 13 the following new sentence: "This section does not apply to
 14 any activity of an employee, as defined in section 7322 (1)
 15 of title 5, unless such activity is prohibited by section 7324
 16 of that title."

17 (2) Chapter 29 of title 18 of the United Sates Code is
 18 amended—

1 (A) by adding at the end the following new
2 section:

3 **“§ 614. Extortion of political contributions from Federal**
4 **personnel**

5 “Whoever, by the commission of or threat of physical
6 violence to, or economic sanction against, any person, ob-
7 tains, or endeavors to obtain, from an officer or employee of
8 the United States or of any department or agency thereof, or
9 from a person receiving any salary or compensation for serv-
10 ices from money derived from the Treasury of the United
11 States, any contribution for the promotion of a political ob-
12 ject, shall be imprisoned not less than two nor more than
13 three years, or fined not more than \$5,000, or both.”; and

14 (B) by adding at the end of the table of sections
15 for such chapter the following new item:

“614. Extortion of political contributions from Federal personnel.”

16 (d) Section 6 of the Voting Rights Act of 1965 (42
17 U.S.C. 1973d) is amended by striking out “the provisions
18 of section 9 of the Act of August 2, 1939, as amended (5
19 U.S.C. 118i), prohibiting partisan political activity” and by
20 inserting in lieu thereof “the provisions of subchapter III
21 of chapter 73 of title 5, United States Code, relating to
22 political activities”.

23 (e) Sections 103 (a) (4) (D) and 203 (a) (4) (D) of
24 the District of Columbia Public Education Act are each

1 amended by striking out "sections 7324 through 7327 of
2 title 5," and inserting in lieu thereof "section 7325 of title 5".

3 ~~(73)(f)~~ The amendments made by this section shall take
4 effect on the ninetieth day after the date of the enactment
5 of this Act, except that the provisions of section 7326(a)
6 ~~(2)~~ of title 5, United States Code, as amended by this Act,
7 shall take effect on the one hundred and twentieth day after
8 such date.

9 *(f) The amendments made by this section shall take*
10 *effect on January 1, 1977.*

11 (g) Not later than sixty days after the date of the enact-
12 ment of this Act, the Civil Service Commission shall—

13 (1) establish standards and criteria by which deter-
14 minations shall be made as to which elective offices will
15 be considered part-time elective offices for purposes of
16 administering section 7326(a) (2) of such title 5, and

17 (2) prepare and transmit a report to the Congress
18 containing such standards and criteria.

19 **(74)** *TITLE II—RESTRICTION ON PAY IN-*
20 *CREASES FOR MEMBERS OF CONGRESS*

21 **(75)** *SEC. 201. Section 601(a) of the Legislative Reorganiza-*
22 *tion Act of 1946 (2 U.S.C. 31) is amended by adding at*
23 *the end thereof the following new paragraph:*

24 *"(3) Notwithstanding paragraphs (1) and (2) of this*
25 *subsection, section 225 of the Federal Salary Act of 1967,*

1 *or any other provision of law, an individual referred to in*
 2 *paragraph (1) may not have his rate of pay increased—*

3 “(A) *by or under any law passed during a Con-*
 4 *gress;*

5 “(B) *under paragraph (2) of this section (except*
 6 *to the extent subparagraph (A) of this paragraph ap-*
 7 *plies), if any alternative plan transmitted by the Presi-*
 8 *dent under section 5305(c)(1) of title 5, United States*
 9 *Code, does not take effect by reason of the adoption dur-*
 10 *ing a Congress of a resolution disapproving such plan;*
 11 *or*

12 “(C) *under recommendations taking effect under*
 13 *section 225 of the Federal Salary Act of 1967 which*
 14 *were transmitted by the President during a Congress;*
 15 *unless such increase is to take effect not earlier than the first*
 16 *day of the next Congress. For purposes of the preceding sen-*
 17 *tence, the period, during any even-numbered year of any*
 18 *Congress, which begins on the Tuesday following the first*
 19 *Monday of November of such year and which ends at noon*
 20 *on the following January 3 shall be considered as occurring*
 21 *during the first session of the following Congress.”.*

22 **(76)**SEC. 202. (a) *Subsection (a) of section 601 of the*
 23 *Legislation Reorganization Act of 1946 (2 U.S.C. 31) is*
 24 *amended—*

25 (1) *by striking out in paragraph (2) “Effective”*

1 and inserting in lieu thereof the following: “Except as
2 provided in paragraph (3) of this subsection, effective”;
3 and

4 (2) by adding at the end thereof the following new
5 paragraph:

6 “(3)(A) If the President transmits to Congress an
7 alternative plan with respect to a pay adjustment under
8 section 5305(c)(1) of title 5, United States Code, an ad-
9 justment under paragraph (2) of this subsection shall be-
10 come effective as provided in such plan unless, before the
11 end of the first period of thirty calendar days of continuous
12 session of Congress after the date on which the alternative
13 plan is transmitted, either House of Congress adopts a reso-
14 lution (separate from but in addition to any resolution under
15 section 5305 of title 5, United States Code) disapproving the
16 application of such alternative plan to such adjustment in the
17 annual rates of pay for the offices referred to in paragraph
18 (1) of this subsection. The continuity of a session is broken
19 only by an adjournment of Congress sine die, and the days on
20 which either House is not in session because of an adjourn-
21 ment of more than three days to a day certain are excluded
22 in the computation of the thirty-day period. If both Houses
23 of Congress fail to pass a resolution within such thirty-day
24 period disapproving the President’s plan under section 5305
25 of title 5, United States Code, such plan of the President

1 shall be applicable to all employees covered by such plan,
 2 including Members of Congress, and the provisions of this
 3 paragraph requiring a separate resolution as to Members of
 4 Congress shall be inapplicable.

5 “(B) The provisions of sections 5305 (d) through (k)
 6 of title 5, United States Code, shall apply to a resolution of
 7 disapproval under subparagraph (A) of this paragraph.”.

8 (b) Notwithstanding any other provision of law, the
 9 rate of pay of—

10 (1) any officer or employee of the Senate or the
 11 House of Representatives or of the Congress,

12 (2) the Comptroller General of the United States,
 13 the Deputy Comptroller General of the United States,
 14 the General Counsel of the United States General Ac-
 15 counting Office, and any other officer or employee of the
 16 United States General Accounting Office,

17 (3) the Librarian of Congress, the Deputy Librar-
 18 ian of Congress, and any other officer or employee of
 19 the Library of Congress,

20 (4) the Architect of the Capitol, the Assistant
 21 Architect of the Capitol, and any other officer or em-
 22 ployee of the Office of Architect of the Capitol,

23 (5) the Public Printer, the Deputy Public Printer,
 24 and any other officer or employee of the Government
 25 Printing Office,

(6) the Director of the Congressional Budget Office,
the Deputy Director of the Congressional Budget Office,
and any other officer or employee of the Congressional
Budget Office,

(7) the Director of the Office of Technology Assessment and any other officer or employee of the Office of Technology Assessment, and

(8) any officer and employee of the Botanic Garden,
shall not exceed the rate of pay for a Member of the Congress.

Passed the House of Representatives October 21, 1975.

Attest: W. PAT JENNINGS,
Clerk.

Passed the Senate with amendments March 11, 1976.

Attest: FRANCIS R. VALEO,
Secretary.

H.R. 8617, THE FEDERAL EMPLOYEES' POLITICAL ACTIVITIES ACT OF 1976

AS REPORTED BY HOUSE-SENATE CONFERENCE ON MARCH 22, 1976

MAJOR PROVISIONS

- *States that federal employees are encouraged to exercise their right of voluntary political participation.
- *Prohibits the use of official authority, influence, or coercion with the right to vote, not to vote or to otherwise engage in political activity.
- *Prohibits use of funds to influence votes; solicitation of political contributions by superior officials; and making political contributions in government rooms or buildings.
- *Prohibits political activity while on duty, in federal buildings, or in uniform.
- *Prohibits the extortion of money for political purposes from federal employees.
- *Retains existing prohibitions against political activities for employees in sensitive positions within the Department of Justice, Internal Revenue Service, and Central Intelligence Agency.
- *Requires that employees who seek elective office do so on their own time. Employees shall, upon request, be granted accrued annual leave to seek elective office.
- *Authorizes the Civil Service Commission to conduct educational, enforcement and investigatory functions. Limits investigation of prohibited activities to 90 days.
- *Establishes an independent Board whose function is to adjudicate alleged violations of law and provides for judicial review of adverse decisions.
- *Subjects violators of law to removal, suspension, or lesser penalties at the discretion of the Board. Requires 30 day suspension without pay for any employee found guilty of violating prohibition against use of official authority or influence.
- *Requires that the Civil Service Commission conduct a program for informing federal employees of their rights of political participation and report annually to the Congress on its implementation.

FEDERAL EMPLOYEES' POLITICAL ACTIVITIES ACT

MARCH 23, 1976.—Ordered to be printed

Mr. HENDERSON, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany H.R. 8617]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 8617) to restore to Federal civilian and Postal Service employees their rights to participate voluntarily, as private citizens, in the political processes of the Nation, to protect such employees from improper political solicitations, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 1, 2, 3, 7, 8, 13, 21, 23, 24, 25, 26, 27, 28, 30, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 58, 59, 60, 61, 62, 63, 64, 66, 67, 68, 69, 71, 72, 74, 75, and 76.

That the House recede from its disagreement to the amendments of the Senate numbered 4, 5, 10, 11, 16, 17, 18, 19, 20, 29, 70, and 73, and agree to the same.

Amendment numbered 6:

That the House recede from its disagreement to the amendment of the Senate numbered 6, and agree to the same with an amendment as follows:

In the matter proposed to be inserted by the Senate amendment, strike out "or any individual" and insert in lieu thereof the following: *of any individual*; and the Senate agree to the same.

Amendment numbered 9:

That the House recede from its disagreement to the amendment of the Senate numbered 9, and agree to the same with an amendment as follows:

In the matter proposed to be inserted by the Senate amendment, strike out "authorizes" and insert in lieu thereof the following: *shall be construed to authorize*; and the Senate agree to the same.

Amendment numbered 12:

That the House recede from its disagreement to the amendment of the Senate numbered 12 and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

"(b) (1) *In addition to the prohibitions of subsection (a) of this subsection, an employee to whom this paragraph applies may not solicit, accept, or receive a political contribution from, or give a political contribution to, an employee, a Member of Congress, or an officer of a uniformed service.*

"(2) Paragraph (1) of this subsection shall apply to any employee of the Internal Revenue Service, the Department of Justice, or the Central Intelligence Agency, other than—

"(A) *an employee of such an agency who is in a position which is not a sensitive position,*

"(B) *an employee of such an agency who is in a sensitive position with respect to which the head of such agency has designated, by regulation, that if any person holding such position engaged in activities prohibited by paragraph (1) of this subsection or by section 7325(d) (1) of this title it would not adversely affect the integrity of the Government, or the public's confidence in the integrity of the Government, or*

"(C) *an individual appointed by the President, by and with the advice and consent of the Senate, who determines policies to be pursued in the nationwide administration of Federal laws.*

For the purpose of this paragraph, 'sensitive position' means any position designated as a sensitive position pursuant to Executive Order Numbered 10450 or under any superceding Federal statute or Executive order.

"(3) *Regulations referred to in subparagraph (A) of this paragraph shall be prescribed not later than 90 days after the effective date of this section. Thereafter any revision of such regulations shall be prescribed not later than March 1 of the year in which such revision is to take effect. Such regulations shall become effective the first day after the close of the first period of 30 calendar days of continuous session of Congress after the date on which such regulations are transmitted to the Congress, unless both Houses of Congress adopt a concurrent resolution disapproving such regulations. Continuity of a session is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 30-day period.*"

And the Senate agree to the same.

Amendment numbered 14:

That the House recede from its disagreement to the amendment of the Senate numbered 14, and agree to the same with an amendment as follows:

In the matter proposed to be inserted by the Senate amendment, insert after "political activity" the following: *otherwise prohibited by or under law*; and the Senate agree to the same.

Amendment numbered 15:

That the House recede from its disagreement to the amendment of the Senate numbered 15 and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

“(d) (1) In addition to the prohibitions of subsection (a) of this section, an employee of the Internal Revenue Service, the Department of Justice, or the Central Intelligence Agency to whom the prohibitions of section 7324(b) of this title apply may not take an active part in political management or political campaigns unless such part—

“(A) is in connection with (i) an election and preceding campaign if none of the candidates is to be nominated or elected at that election as representing a party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected, or (ii) a question which is not specifically identified with a National or State political party or political party of a territory or possession of the United States; or

“(B) is permitted by regulations prescribed by the Civil Service Commission and involves the municipality or political subdivision in which such employee resides, when—

“(i) the municipality or political subdivision is in Maryland or Virginia in the immediate vicinity of the District of Columbia or is a municipality in which a majority of voters are employed by the Government of the United States; and

“(ii) the Commission determines that because of special or unusual circumstances which exist in the municipality or political subdivision it is in the domestic interest of the employees to permit political participation.

“(2) For the purpose of this subsection, ‘an active part in political management or in political campaigns’ means those acts of political management or political campaigning which were prohibited on the part of the employees in the competitive service before July 19, 1940, by the determinations of the Civil Service Commission under the rules prescribed by the President.

And the Senate agree to the same.

Amendment numbered 22:

That the House recede from its disagreement to the amendment of the Senate numbered 22, and agree to the same with an amendment as follows:

Restore the matter proposed to be stricken out by the Senate amendment, and on page 9, line 20, of the House engrossed bill, strike out the quotation marks following “1 year.”; and the Senate agree to the same.

Amendment numbered 31:

That the House recede from its disagreement to the amendment of the Senate numbered 31, and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following: *filed within the time allowed therefor*; and the Senate agree to the same.

Amendment number 57:

That the House recede from its disagreement to the amendment of the Senate numbered 57, and agree to the same with an amendment as follows:

In the matter proposed to be inserted by the Senate amendment, strike out "Commission" and insert the following: *Board*; and the Senate agree to the same.

Amendment numbered 65:

That the House recede from its disagreement to the amendment of the Senate numbered 65, and agree to the same with amendments as follows:

In the matter proposed to be inserted by the Senate amendment, strike out "ninety days" and insert in lieu thereof *30 days*, and strike out "Commission" each place it appears and insert in lieu thereof *Board*; and the Senate agree to the same.

DAVID N. HENDERSON,
DOMINICK V. DANIELS,
ROBERT N. C. NIX,
JIM HANLEY,
CHAS. H. WILSON of California,
W. CLAY,
GLADYS NOON SPELLMAN,
HERBERT E. HARRIS II,
STEPHEN J. SOLARZ,

Managers on the Part of the House.

GALE W. MCGEE,
Q. BURDICK,
TED STEVENS,

Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 8617) to restore to Federal civilian and Postal Service employees their rights to participate voluntarily, as private citizens, in the political processes of the Nation, to protect such employees from improper political solicitations, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

TECHNICAL, CLERICAL, CLARIFYING, OR CONFORMING CHANGES

The following Senate amendments made technical, clerical, clarifying, or conforming changes: 1, 2, 3, 4, 5, 7, 8, 10, 11, 13, 17, 18, 19, 20, 21, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 67, 68, 69, 71, 72, and 74.

With respect to these amendments either the House recedes, the Senate recedes, or the House recedes with an amendment in order to conform to other action agreed upon by the committee of conference.

PERSONAL SERVICES

AMENDMENT NO. 6

This amendment expressly includes the provision of personal services within the meaning of "political contributions", as defined for purposes of subchapter III of chapter 73 of title 5 (the Hatch Act), as amended by the House bill.

The House bill does not contain a similar provision, although the House Report specifically states that the term "political contributions" is intended to include the rendering of personal services.

The House recedes with a clerical amendment. It should be noted that it is the understanding of the conferees that the Senate amendment does not prohibit an employee from voluntarily contributing his personal services for political purposes except to the same extent that political contributions are otherwise prohibited by the House bill, including the prohibition against the giving of a political contribution to or the acceptance of a political contribution by the superior of an employee. It is also the understanding of the conferees that an employee contributing his personal services or a candidate or other person accepting such contribution shall not be required under the provisions of the bill to place a dollar value on such contribution.

USE OF OFFICIAL INFORMATION

AMENDMENT NO. 9

This amendment provides that section 7323 of title 5, United States Code, as proposed to be added by the House bill, does not authorize the use by any employee of any information coming to him in the course of his employment or official duties if such use is otherwise prohibited by law.

The House bill does not contain a similar provision.

The House recedes with a conforming amendment.

POLITICAL CONTRIBUTIONS BY OR TO JUSTICE, IRS, AND CIA
EMPLOYEES

AMENDMENT NO. 12

The House bill provides in effect that, subject to the provisions of section 7324 of title 5, as proposed to be added by the House bill, employees of the Justice Department, the CIA, or the IRS (as in the case of other Federal employees) may solicit and give political contributions.

Senate amendment No. 12, in addition to the prohibitions of the House bill, prohibits employees of the Justice Department, the CIA, and the IRS from requesting, or receiving from, or giving to, an employee, a Member of Congress, or an officer of a uniformed service, a political contribution, thus retaining existing law (5 U.S.C. 7323) for such employees with regard to political contributions.

The House recedes with an amendment which narrows the Senate amendment with respect to the number of employees of the Justice Department, the CIA, and the IRS who are subject to the additional prohibitions. Employees exempted include: (A) employees in non-sensitive positions; (B) employees in sensitive positions when the agency head determines, by regulation, that active political participation by incumbents of those positions would not adversely affect the integrity of the Government or the public's confidence in the integrity of the Government; and (C) individuals appointed by the President, by and with the advice and consent of the Senate, who determine policies to be determined in the nationwide administration of Federal laws. The amendment further provides that such regulations must be prescribed not later than 90 days after the effective date of section 7324, and that such regulations become effective 30 legislative days thereafter unless disapproved by both Houses of Congress.

It is the understanding of the conferees that the term "sensitive position" includes any position which the head of the Justice Department, the CIA, or the IRS is required to designate as sensitive under section 3(b) of Executive Order No. 10450, as amended. It is the further understanding of the conferees that under subchapter I-3 of chapter 732 of the Federal Personnel Manual, those positions required to be designated as sensitive include positions which require fiduciary,

public contact, or other duties that demand the highest degree of public trust.

OTHER POLITICAL ACTIVITIES OF JUSTICE, IRS, AND CIA EMPLOYEES

AMENDMENT NO. 15

The House bill provides in effect that subject to the specific prohibitions of sections 7323, 7325, and 7326 of title 5, as proposed to be added by the House bill, employees of the Justice Department, the CIA, or the IRS (as in the case of other Federal employees) may actively engage in political activities and run for elective office.

Senate Amendment No. 15 continues the present provisions of subchapter III of chapter 73 of title 5 (the Hatch Act), relating to employees taking an active part in political management or political campaigns, with respect to employees of the Justice Department, the CIA, and the IRS.

The House recedes with an amendment which provides that employees of the Justice Department, the IRS, and the CIA with respect to whom the prohibitions of section 7324(b) (1) of title 5, as proposed to be added by the House bill, apply will remain subject to the present provisions of existing law which relate to employees taking an active part in political management or political campaigns.

POLITICAL ACTIVITIES BY EMPLOYEES OF THE WHITE HOUSE AND VICE PRESIDENTIAL STAFFS

AMENDMENT NO. 14

The House bill exempts certain employees of the White House and Vice Presidential staffs from the provisions of section 7325(a) of title 5, as proposed to be added by the House bill, prohibiting political activity while on duty, while on Government property, or while in uniform.

Senate amendment No. 14 provides that such an exemption shall not be construed as an authorization for the individuals so exempted to engage in political activity.

The House recedes with an amendment, inserting *otherwise prohibited by or under law* after "political activity" in the matter proposed to be inserted by the Senate amendment.

LEAVE TO RUN FOR ELECTIVE OFFICE

AMENDMENT NO. 16

The House bill provides that an agency must, upon request, grant accrued annual leave and leave-without-pay to an employee running for elective office. The House bill also provides that an employee who is a candidate for elective office must go on leave-without-pay not later than 90 days before an election.

Senate amendment No. 16 strikes out the provisions of the House bill which require that leave-without-pay must be granted upon request and that a candidate must take leave-without-pay 90 days before an election.

The House recedes.

BOARD ON POLITICAL ACTIVITIES OF FEDERAL EMPLOYEES

AMENDMENT NO. 22

The House bill separates prosecutorial and adjudicatory responsibility now held by the Civil Service Commission by establishing an independent 3-member board and by granting to such board the authority to hear and decide cases regarding violations of section 7323, 7324, and 7325 of title 5, as proposed to be added by the House bill. The Civil Service Commission retains the investigatory, educational, and enforcement authority with respect to political activity.

Senate amendment No. 22 provides that the Commission, not the Board, is responsible for hearing and deciding cases involving violations of prohibitions on political activity.

The House recedes with an amendment under which the provisions of the House bill are restored, and which corrects a clerical error in such provisions.

NOTICES OF VIOLATIONS

AMENDMENT NO. 25

The House bill provides that service of a written notice of any alleged violation of sections 7323, 7324, or 7325 of title 5, as proposed to be added by the House bill, shall be made by certified mail, return receipt requested.

Senate amendment No. 25 eliminates the requirement for a return receipt request with a certified notice, leaving it to the Civil Service Commission to determine the requirements with respect to such notice.

The Senate recedes.

PENALTIES FOR MISUSE OF OFFICIAL AUTHORITY OR INFLUENCE

AMENDMENT NO. 65

The House bill provides for the imposition of appropriate penalties by the Board in the case of an employee who has violated sections 7323, 7324, or 7325 of title 5, as proposed to be added by the House bill.

Senate amendment No. 65 provides a minimum penalty of a 90-day suspension for an employee found to have violated the restrictions on misuse of official authority or influence and the imposition of appropriate penalties for violations of the restrictions on soliciting political contributions and engaging in political activity while on duty, while on government property, or while in uniform.

The House recedes, with amendments striking out "ninety days" in the matter proposed to be inserted by the Senate amendment and inserting in lieu thereof *30 days* and striking out "Commission" each

time it appears in the matter proposed to be inserted by the Senate amendment and inserting in lieu thereof *Board*.

PENALTIES FOR REPEAT OFFENDERS

AMENDMENT NO. 66

This amendment provides that an employee, who has been found to have violated on two occasions section 7323, 7324, or 7325 of title 5, as proposed to be added by the House bill, must be removed from employment and is thereafter barred from Federal employment.

The House bill has no similar provision.

The Senate recedes.

TIME LIMITATION FOR PROVIDING CERTAIN INFORMATION

AMENDMENT NO. 70

The House bill requires the Commission to annually inform each employee, in writing, of prohibited and permissible political activities. Such information must be provided not later than 60 days before the earliest primary or general election in the State where the employee is employed.

Senate amendment No. 70 requires that such information be provided not later than 120 days before such an election.

The House recedes.

EFFECTIVE DATE

AMENDMENT NO. 73

The House bill provides that the amendments made by this Act shall take effect 90 days after the date of enactment.

Senate amendment No. 73 provides that the amendments made by this Act shall take effect on January 1, 1977.

The House recedes.

RESTRICTION ON WHEN PAY INCREASES FOR MEMBERS OF CONGRESS TAKE EFFECT

AMENDMENT NO. 75

This amendment provides that any provision for any pay increase for Members of Congress shall not take effect before the first day of the next Congress.

The House bill does not contain a similar provision.

The Senate recedes.

REQUIREMENT OF SEPARATE RESOLUTION ON PAY INCREASES FOR MEMBERS OF CONGRESS

AMENDMENT NO. 76

This amendment requires that if the President submits an alternative plan with respect to a comparability pay adjustment, the alterna-

tive plan will not be effective with respect to the rate of pay of Members of Congress unless either House adopts a separate resolution disapproving the application of such plan to the pay of Members of Congress in addition to any resolution under section 5305 of title 5. This amendment also provides that the rate of pay of officers and employees of the Congress and other officers and employees in the legislative branch may not exceed the rate of pay for Members of Congress.

The House bill does not contain a similar provision.

The Senate recedes.

DAVID N. HENDERSON,
DOMINICK V. DANIELS,
ROBERT N. C. NIX,
JIM HANLEY,
CHAS. H. WILSON of California,
W. CLAY,
GLADYS NOON SPELLMAN,
HERBERT E. HARRIS II,
STEPHEN J. SOLARZ,

Managers on the Part of the House.

GALE W. MCGEE,
Q. BURDICK,
TED STEVENS,

Managers on the Part of the Senate.

H. R. 8617

Ninety-fourth Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday, the nineteenth day of January,
one thousand nine hundred and seventy-six*

An Act

To restore to Federal civilian and Postal Service employees their rights to participate voluntarily, as private citizens, in the political processes of the Nation, to protect such employees from improper political solicitations, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Employees' Political Activities Act of 1976".

SEC. 2. (a) Subchapter III of chapter 73 of title 5, United States Code, is amended to read as follows:

"SUBCHAPTER III—POLITICAL ACTIVITIES

"§ 7321. Political participation

"It is the policy of the Congress that employees should be encouraged to fully exercise, to the extent not expressly prohibited by law, their rights of voluntary participation in the political processes of our Nation.

"§ 7322. Definitions

"For the purpose of this subchapter—

"(1) 'employee' means any individual, including the President and the Vice President, employed or holding office in—

- "(A) an Executive agency,
- "(B) the government of the District of Columbia,
- "(C) the competitive service, or
- "(D) the United States Postal Service or the Postal Rate Commission;

but does not include a member of the uniformed services;

"(2) 'candidate' means any individual who seeks nomination for election, or election, to any elective office, whether or not such individual is elected, and, for the purpose of this paragraph, an individual shall be deemed to seek nomination for election, or election, to an elective office, if such individual has—

"(A) taken the action required to qualify for nomination for election, or election, or

"(B) received political contributions or made expenditures, or has given consent for any other person to receive political contributions or make expenditures, with a view to bringing about such individual's nomination for election, or election,

to such office;

“(3) ‘political contribution’—

“(A) means a gift, subscription, loan, advance, or deposit of money or anything of value, made for the purpose of influencing the nomination for election, or election, of any individual to elective office or for the purpose of otherwise influencing the results of any election;

“(B) includes a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a political contribution for any such purpose;

“(C) includes the payment by any person, other than a candidate or a political organization of compensation for the personal services of another person which are rendered to such candidate or political organization without charge for any such purpose; and

“(D) includes the provision of personal services for the purpose of influencing the nomination for election, or election, of any individual to elective office or for the purpose of otherwise influencing the results of any election;

“(4) ‘superior’ means an employee (other than the President or the Vice President) who exercises supervision of, or control or administrative direction over, another employee;

“(5) ‘elective office’ means any elective public office and any elective office of any political party or affiliated organization; and

“(6) ‘Board’ means the Board on Political Activities of Federal Employees established under section 7327 of this title.

“§ 7323. Use of official authority or influence; prohibition

“(a) An employee may not directly or indirectly use or attempt to use the official authority or influence of such employee for the purpose of—

“(1) interfering with or affecting the result of any election; or

“(2) intimidating, threatening, coercing, commanding, influencing, or attempting to intimidate, threaten, coerce, command, or influence—

“(A) any individual for the purpose of interfering with the right of any individual to vote as such individual may choose, or of causing any individual to vote, or not to vote, for any candidate or measure in any election;

“(B) any person to give or withhold any political contribution; or

“(C) any person to engage, or not to engage, in any form of political activity whether or not such activity is prohibited by law.

“(b) Nothing in this section shall be construed to authorize the use by any employee of any information coming to him in the course of his employment or official duties for any purpose where otherwise prohibited by law.

“(c) For the purpose of subsection (a) of this section, ‘use of official authority or influence’ includes, but is not limited to, promising to confer or conferring any benefit (such as appointment, promotion, compensation, grant, contract, license, or ruling), or effecting or

threatening to effect any reprisal (such as deprivation of appointment, promotion, compensation, grant, contract, license, or ruling).

“§ 7324. Solicitation; prohibition

“(a) An employee may not—

“(1) give or offer to give a political contribution to any individual either to vote or refrain from voting, or to vote for or against any candidate or measure, in any election;

“(2) solicit, accept, or receive a political contribution to vote or refrain from voting, or to vote for or against any candidate or measure, in any election;

“(3) knowingly give or hand over a political contribution to a superior of such employee; or

“(4) knowingly solicit, accept, or receive, or be in any manner concerned with soliciting, accepting, or receiving, a political contribution—

“(A) from another employee (or a member of another employee’s immediate family) with respect to whom such employee is a superior; or

“(B) in any room or building occupied in the discharge of official duties by—

“(i) an individual employed or holding office in the Government of the United States, in the government of the District of Columbia, or in any agency or instrumentality of the foregoing; or

“(ii) an individual receiving any salary or compensation for services from money derived from the Treasury of the United States.

“(b) (1) In addition to the prohibitions of subsection (a) of this section, an employee to whom this paragraph applies may not solicit, accept, or receive a political contribution from, or give a political contribution to, an employee, a Member of Congress, or an officer of a uniformed service.

“(2) Paragraph (1) of this subsection shall apply to any employee of the Internal Revenue Service, the Department of Justice, or the Central Intelligence Agency, other than—

“(A) an employee of such an agency who is in a position which is not a sensitive position,

“(B) an employee of such an agency who is in a sensitive position with respect to which the head of such agency has designated, by regulation, that if any person holding such position engaged in activities prohibited by paragraph (1) of this subsection or by section 7325(d) (1) of this title it would not adversely affect the integrity of the Government, or the public’s confidence in the integrity of the Government, or

“(C) an individual appointed by the President, by and with the advice and consent of the Senate, who determines policies to be pursued in the nationwide administration of Federal laws.

For the purpose of this paragraph, ‘sensitive position’ means any position designated as a sensitive position pursuant to Executive Order Numbered 10450 or under any superseding Federal statute or Executive order.

“(3) Regulations referred to in subparagraph (B) of this paragraph shall be prescribed not later than 90 days after the effective date of this section. Thereafter any revision of such regulations shall be prescribed not later than March 1 of the year in which such revision is to take effect. Such regulations shall become effective the first day after the close of the first period of 30 calendar days of continuous session of Congress after the date on which such regulations are transmitted to the Congress, unless both Houses of Congress adopt a concurrent resolution disapproving such regulations. Continuity of a session is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 30-day period.

“§ 7325. Political activities on duty, etc.; prohibition

“(a) An employee may not engage in political activity—

“(1) while such employee is on duty,

“(2) in any room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States, in the government of the District of Columbia, or in any agency or instrumentality of the foregoing, or

“(3) while wearing a uniform or official insignia identifying the office or position of such employee.

“(b) The provisions of subsection (a) of this section shall not apply to—

“(1) the President and the Vice President;

“(2) an individual—

“(A) paid from the appropriation for the White House Office,

“(B) paid from funds to enable the Vice President to provide assistance to the President, or

“(C) on special assignment to the White House Office, unless such individual holds a career or career-conditional appointment in the competitive service; or

“(3) the Mayor of the District of Columbia, the Chairman or a member of the Council of the District of Columbia, as established by the District of Columbia Self-Government and Governmental Reorganization Act.

“(c) Nothing in this section shall be construed to authorize an individual designated in subsection (b)(2) to engage in political activity otherwise prohibited by or under law.

“(d)(1) In addition to the prohibitions of subsection (a) of this section, an employee of the Internal Revenue Service, the Department of Justice, or the Central Intelligence Agency to whom the prohibitions of section 7324(b) of this title apply may not take an active part in political management or political campaigns unless such part—

“(A) is in connection with (i) an election and preceding campaign if none of the candidates is to be nominated or elected at that election as representing a party any of whose candidates for Presidential elector received votes in the last preceding election

at which Presidential electors were selected, or (ii) a question which is not specifically identified with a National or State political party or political party of a territory or possession of the United States; or

“(B) is permitted by regulations prescribed by the Civil Service Commission and involves the municipality or political subdivision in which such employee resides, when—

“(i) the municipality or political subdivision is in Maryland or Virginia and in the immediate vicinity of the District of Columbia or is a municipality in which a majority of voters are employed by the Government of the United States; and

“(ii) the Commission determines that because of special or unusual circumstances which exist in the municipality or political subdivision it is in the domestic interest of the employees to permit political participation.

“(2) For the purpose of this subsection, ‘an active part in political management or in political campaigns’ means those acts of political management or political campaigning which were prohibited on the part of employees in the competitive service before July 19, 1940, by the determinations of the Civil Service Commission under the rules prescribed by the President.

“§ 7326. Candidates for elective office; leave, notification by employees

“(a) Notwithstanding section 6302(d) of this title, an employee who is a candidate for elective office shall, upon the request of such employee, be granted accrued annual leave for the purpose of allowing such employee to engage in activities relating to such candidacy.

“(b) An employee shall promptly notify the agency in which he is employed upon becoming a candidate for elective office and upon the termination of such candidacy.

“(c) The foregoing provisions of this section shall not apply in the case of an individual who is an employee by reason of holding an elective public office.

“§ 7327. Board on Political Activities of Federal Employees

“(a) There is established a board to be known as the Board on Political Activities of Federal Employees. It shall be the function of the Board to hear and decide cases regarding violations of sections 7323, 7324, and 7325 of this title.

“(b) The Board shall be composed of 3 members, appointed by the President, by and with the advice and consent of the Senate. One member shall be designated by the President as Chairman of the Board.

“(c) Members of the Board shall be chosen on the basis of their professional qualifications from among individuals who, at the time of their appointment, are employees (as defined under section 7322(1) of this title), except that not more than 2 individuals of the same political party may be appointed as members. Employees of the Civil Service Commission shall be ineligible to be appointed to or to hold office as members of the Board.

“(d) (1) Members of the Board shall serve a term of 3 years, except that of the members first appointed—

- “(A) the Chairman shall be appointed for a term of 3 years,
- “(B) one member, designated by the President, shall be appointed for a term of 2 years, and
- “(C) one member, designated by the President, shall be appointed for a term of 1 year.

An individual appointed to fill a vacancy occurring other than by the expiration of a term of office shall be appointed only for the unexpired term of the member such individual will succeed. Any vacancy occurring in the membership of the Board shall be filled in the same manner as in the case of the original appointment.

“(2) If an employee who was appointed as a member of the Board is separated from service as an employee, he may not continue as a member of the Board after the 60-day period beginning on the date so separated.

“(e) The Board shall meet at the call of the Chairman.

“(f) All decisions of the Board with respect to the exercise of its duties and powers under the provisions of this subchapter shall be made by a majority vote of the Board.

“(g) A member of the Board may not delegate to any person his vote nor, except as expressly provided by this subchapter, may any decisionmaking authority vested in the Board by the provisions of this subchapter be delegated to any member or person.

“(h) The Board shall prepare and publish in the Federal Register written rules for the conduct of its activities, shall have an official seal which shall be judicially noticed, and shall have its office in or near the District of Columbia (but it may meet or exercise any of its powers anywhere in the United States).

“(i) The Civil Service Commission shall provide such clerical and professional personnel, and administrative support, as the Chairman of the Board considers appropriate and necessary to carry out the Board's functions under this subchapter. Such personnel shall be responsible to the Chairman of the Board.

“(j) The Administrator of the General Services Administration shall furnish the Board suitable office space appropriately furnished and equipped, as determined by the Administrator.

“(k) (1) Members of the Board shall receive no additional pay on account of their service on the Board.

“(2) Members shall be entitled to leave without loss of or reduction in pay, leave, or performance or efficiency rating during a period of absence while in the actual performance of duties vested in the Board.

“§ 7328. Investigation; procedures; hearing

“(a) The Civil Service Commission shall investigate reports and allegations of any activity prohibited by section 7323, 7324, or 7325 of this title. Any such investigation shall terminate not later than 90 days after the date of its commencement, except that such 90-day limitation may be extended upon the written approval of the Board for the period specified in such approval. If the Commission does not make the notification required under subsection (c) of this section before the close of the period for investigation, subsections (c) (2) and (3) and (d) of this section, and section 7329 of this title, shall not apply there-

after to the employee involved with respect to the activities under investigation.

“(b) As a part of the investigation of the activities of an employee, the Commission shall provide such employee an opportunity to make a statement concerning the matters under investigation and to support such statement with any documents the employee wishes to submit. An employee of the Commission lawfully assigned to investigate a violation of this subchapter may administer an oath to a witness attending to testify or depose in the course of the investigation.

“(c) (1) If it appears to the Commission after investigation that a violation of section 7323, 7324, or 7325 of this title has not occurred, it shall so notify the employee and the agency in which the employee is employed.

“(2) Except as provided in paragraph (3) of this subsection, if it appears to the Commission after investigation that a violation of section 7323, 7324, or 7325 of this title has occurred, the Commission shall submit to the Board and serve upon the employee a notice by certified mail, return receipt requested (or if notice cannot be served in such manner, then by any method calculated to reasonably apprise the employee)—

“(A) setting forth specifically and in detail the charges of alleged prohibited activity;

“(B) advising the employee of the penalties provided under section 7329 of this title;

“(C) specifying a period of not less than 30 days within which the employee may file with the Board a written answer to the charges in the manner prescribed by rules issued by the Board; and

“(D) advising the employee that unless the employee answers the charges, in writing, within the time allowed therefor, the Board is authorized to treat such failure as an admission by the employee of the charges set forth in the notice and a waiver by the employee of the right to a hearing on the charges.

“(3) If it appears to the Commission after investigation that a violation of section 7323, 7324, or 7325 of this title has been committed by—

“(A) the Vice President;

“(B) an employee appointed by the President by and with the advice and consent of the Senate;

“(C) an employee whose appointment is expressly required by statute to be made by the President;

“(D) the Mayor of the District of Columbia; or

“(E) the Chairman or a member of the Council of the District of Columbia, as established by the District of Columbia Self-Government and Governmental Reorganization Act;

the Commission shall refer the case to the Attorney General for prosecution under title 18, and shall report the nature and details of the violation to the President and to the Congress.

“(d) (1) If a written answer is not filed within the time allowed therefor, the Board may, without further proceedings, issue its final decision and order.

“(2) If an answer is filed within the time allowed therefor, the

charges shall be determined by the Board on the record after a hearing conducted by a hearing examiner appointed under section 3105 of this title, and, except as otherwise expressly provided under this subchapter, in accordance with the requirements of subchapter II of chapter 5 of this title, notwithstanding any exception therein for matters involving the tenure of an employee. The hearing shall be commenced within 30 days after the answer is filed with the Board and shall be conducted without unreasonable delay. As soon as practicable after the conclusion of the hearing, the examiner shall serve upon the Board, the Commission, and the employee such examiner's recommended decision with notice to the Commission and the employee of opportunity to file with the Board, within 30 days after the date of such notice, exceptions to the recommended decision. The Board shall issue its final decision and order in the proceeding no later than 60 days after the date the recommended decision is served. The employee shall not be removed from active duty status by reason of the alleged violation of this subchapter at any time before the effective date specified by the Board.

"(e) (1) At any stage of a proceeding or investigation under this subchapter, the Board may, at the written request of the Commission or the employee, require by subpoena the attendance and testimony of witnesses and the production of documentary or other evidence relating to the proceeding or investigation at any designated place, from any place in the United States or any territory or possession thereof, the Commonwealth of Puerto Rico, or the District of Columbia. Any member of the Board may issue subpoenas, and members of the Board and any hearing examiner authorized by the Board may administer oaths, examine witnesses, and receive evidence. In the case of contumacy or failure to obey a subpoena, the United States district court for the judicial district in which the person to whom the subpoena is addressed resides or is served may, upon application by the Board, issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

"(2) The Board (or a member designated by the Board) may order the taking of depositions at any stage of a proceeding or investigation under this subchapter. Depositions shall be taken before an individual designated by the Board and having the power to administer oaths. Testimony shall be reduced to writing by or under the direction of the individual taking the deposition and shall be subscribed by the deponent.

"(3) (A) After requesting in writing and obtaining the approval of the Attorney General, the Board may determine that an employee's attendance and testimony are necessary to the carrying out of the Board's functions under this subchapter. For purposes of the preceding sentence, if the Attorney General does not notify the Board in writing within 30 days after the date on which a request for such approval is made that the Board does not have his approval, then such approval is deemed to have been given. Such 30-day period shall be extended an additional 10 days if the Attorney General submits in writing to the Board the reason for such extension.

“(B) If the Board makes a determination under subparagraph (A) with respect to any employee, such employee may not be excused from attending and testifying or from producing documentary or other evidence in obedience to a subpoena of the Board on the ground that the testimony or evidence required of the employee may tend to incriminate the employee or subject the employee to a penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the employee is compelled to testify or produce evidence. No employee shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the employee is compelled under this paragraph, after having claimed the privilege against self-incrimination, to testify or produce evidence, nor shall testimony or evidence so compelled be used as evidence in any criminal proceeding against the employee in any court, except that no employee shall be exempt from prosecution and punishment for perjury committed in so testifying.

“(f) An employee upon whom a penalty is imposed by an order of the Board under subsection (d) of this section may, within 30 days after the date on which the order was issued, institute an action for judicial review of the Board's order in the United States District Court for the District of Columbia or in the United States district court for the judicial district in which the employee resides or is employed. The institution of an action for judicial review shall not operate as a stay of the Board's order, unless the court specifically orders such stay. A copy of the summons and complaint shall be served as otherwise prescribed by law and, in addition, upon the Board which shall then certify and file with the court the record upon which the Board's order was based. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that the additional evidence may materially affect the result of the proceeding and that there were reasonable grounds for failure to adduce the evidence at the hearing conducted under subsection (d)(2) of this section, the court may direct that the additional evidence be taken before the Board in the manner and on the terms and conditions fixed by the court. The Board may modify its findings of fact or order, in the light of the additional evidence, and shall file with the court such modified findings or order. The Board's findings of fact, if supported by substantial evidence, shall be conclusive. The court shall affirm the Board's order if it determines that it is in accordance with law. If the court determines that the order is not in accordance with law—

“(1) it shall remand the proceeding to the Board with directions either to enter an order determined by the court to be lawful or to take such further proceedings as, in the opinion of the court, are required; and

“(2) it may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred by the employee.

“(g) The Commission or the Board, in its discretion, may proceed with any investigation or proceeding instituted under this subchapter notwithstanding that the Commission or the head of an employing agency or department has reported the alleged violation to the Attorney General as required by section 535 of title 28.

“§ 7329. Penalties

“(a) Subject to and in accordance with section 7328 of this title, an employee who is found to have violated any provision of—

“(1) section 7323 of this title shall, upon a final order of the Board, be suspended without pay from such employee’s position for a period not less than 30 days, or shall be permanently removed in which event that employee may not thereafter hold any position (other than an elected position) as an employee (as defined in section 7322(1) of this title);

“(2) section 7324 or 7325 of this title shall, upon a final order of the Board, be—

“(A) removed from such employee’s position, in which event that employee may not thereafter hold any position (other than an elected position) as an employee (as defined in section 7322(1) of this title) for such period as the Board may prescribe;

“(B) suspended without pay from such employee’s position for such period as the Board may prescribe; or

“(C) disciplined in such other manner as the Board shall deem appropriate.

“(b) The Board shall notify the Commission, the employee, and the employing agency of any penalty it has imposed under this section. The employing agency shall certify to the Board the measures undertaken to implement the penalty.

“§ 7330. Educational program; reports

“(a) The Commission shall establish and conduct a continuing program to inform all employees of their rights of political participation and to educate employees with respect to those political activities which are prohibited. The Commission shall inform each employee individually in writing, at least once each calendar year, of such employee’s political rights and of the restrictions under this subchapter. The Commission may determine, for each State, the most appropriate date for providing information required by this subsection. Such information, however, shall be provided to employees employed or holding office in any State not later than 120 days before the earliest primary or general election for State or Federal elective office held in such State.

“(b) On or before March 30 of each calendar year, the Commission shall submit a report covering the preceding calendar year to the Speaker of the House of Representatives and the President pro tempore of the Senate for referral to the appropriate committees of the Congress. The report shall include—

“(1) the number of investigations conducted under section 7328 of this title and the results of such investigations;

“(2) the name and position or title of each individual involved, and the funds expended by the Commission, in carrying out the program required under subsection (a) of this section; and

“(3) an evaluation which describes—

“(A) the manner in which such program is being carried out; and

“(B) the effectiveness of such program in carrying out

the purposes set forth in subsection (a) of this section.

“§ 7331. Regulations

“The Civil Service Commission shall prescribe such rules and regulations as may be necessary to carry out its responsibilities under this subchapter. However, no regulation or rule of the Commission or any amendment thereto shall take effect unless—

“(1) the Commission transmits such rule, regulation, or amendments to the Congress; and

“(2) neither House of Congress has disapproved such rule, regulation, or amendment within 30 legislative days from the date of transmittal to the Congress.”

(b) (1) Section 3302 of title 5, United States Code, is amended by striking out “7153, 7321, and 7322” and inserting in lieu thereof “and 7153”.

(2) Section 1308(a) of title 5, United States Code, is amended—

(A) by inserting “and” at the end of paragraph (2);

(B) by striking out paragraph (3); and

(C) by redesignating paragraph (4) as paragraph (3).

(3) The second sentence of section 8332(k) (1) of title 5, United States Code, is amended by striking out “second” and inserting “last” in lieu thereof.

(4) The section analysis for subchapter III of chapter 73 of title 5, United States Code, is amended to read as follows:

“SUBCHAPTER III—POLITICAL ACTIVITIES

“Sec.

“7321. Political participation.

“7322. Definitions.

“7323. Use of official authority or influence; prohibition.

“7324. Solicitation; prohibition.

“7325. Political activities on duty, etc.; prohibition.

“7326. Candidates for elective office; leave, notification by employees.

“7327. Board on Political Activities of Federal Employees.

“7328. Investigation; procedures; hearing.

“7329. Penalties.

“7330. Educational program; reports.

“7331. Regulations.”

(c) (1) Sections 602 and 607 of title 18, United States Code, relating to solicitations and making of political contributions, are each amended by adding at the end thereof the following new sentence: “This section does not apply to any activity of an employee, as defined in section 7322(1) of title 5, unless such activity is prohibited by section 7324 of that title.”

(2) Chapter 29 of title 18 of the United States Code is amended—

(A) by adding at the end the following new section:

“§ 618. Extortion of political contributions from Federal personnel

“Whoever, by the commission of or threat of physical violence to, or economic sanction against, any person, obtains, or endeavors to obtain, from an officer or employee of the United States or of any department or agency thereof, or from a person receiving any salary or compensation for services from money derived from the Treasury of the United States, any contribution for the promotion of a political

object, shall be imprisoned not less than two nor more than three years, or fined not more than \$5,000, or both.”; and

(B) by adding at the end of the table of sections for such chapter the following new item:

“618. Extortion of political contributions from Federal personnel.”

(d) Section 6 of the Voting Rights Act of 1965 (42 U.S.C. 1973d) is amended by striking out “the provisions of section 9 of the Act of August 2, 1939, as amended (5 U.S.C. 118i), prohibiting partisan political activity” and by inserting in lieu thereof “the provisions of subchapter III of chapter 73 of title 5, United States Code, relating to political activities”.

(e) Sections 103(a)(4)(D) and 203(a)(4)(D) of the District of Columbia Public Education Act are each amended by striking out “sections 7324 through 7327 of title 5” and inserting in lieu thereof “section 7325 of title 5”.

(f) The amendments made by this section shall take effect on January 1, 1977. .

CARL ALBERT,
Speaker of the House of Representatives.

JAMES O. EASTLAND,
President of the Senate, pro tempore.

I certify that this Act originated in the House of Representatives.

EDMUND L. HENSHAW, JR.,
Clerk.

CONGRESSIONAL RECORD — HOUSE

*March 30, 1976*CONFERENCE REPORT ON H.R. 8617,
FEDERAL EMPLOYEES' POLITICAL
ACTIVITIES ACT

Mr. HENDERSON. Mr. Speaker, I call up the conference report on the bill (H.R. 8617) to restore to Federal civilian and Postal Service employees their rights to participate voluntarily, as private citizens, in the political processes of the Nation, to protect such employees from improper political solicitations, and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

The Clerk read the statement.

(For conference report and statement, see proceedings of the House of March 23, 1976.)

Mr. HENDERSON (during the reading). Mr. Speaker, I ask unanimous consent that further reading of the statement be dispensed with.

The SPEAKER. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

Mr. HENDERSON. Mr. Speaker, I yield myself such time as I may consume.

(Mr. HENDERSON asked and was given permission to revise and extend his remarks.)

Mr. HENDERSON. Mr. Speaker, the conference report on H.R. 8617 differs in several respects from the bill as it originally passed the House. These differences pertain to provisions which would modify existing law relating to political activity by Federal employees, commonly known as the Hatch Act, and in a moment I will yield to the distinguished gentleman from Missouri (Mr. CLAY), who sponsored this legislation, to explain these differences. I would, however, like to take a moment to comment upon some provisions which are not in the conference report—those provisions being the Senate amendments which pertained to congressional pay.

During its deliberations on H.R. 8617 the Senate added a new title to the bill which consisted of three amendments pertaining to the manner in which congressional pay increases may be considered. The first amendment provided that

pay increases for Members of Congress would not take effect before the next congressional election after Congress approves such an increase. The second amendment required the adoption of a separate resolution of disapproval with respect to congressional comparability pay increases in the event the President submitted an alternative pay plan. The amendment further required that the resolution must be in addition to a disapproval resolution relating to Federal employee pay. Finally, a third Senate amendment provided that the rate of pay of officers and employees in the legislative branch could not exceed that for Members of Congress.

The House bill contained no provisions relating to congressional pay. It was clear that under the House rules the Senate amendments were nongermane, and if these amendments were included in the conference report, the entire report would be subject to a point of order in the House. For this reason, the managers on the part of the House insisted that the Senate recede from these particular amendments and the managers on the part of the Senate agreed to that request.

I now yield such time as he may consume to the distinguished gentleman from Missouri (Mr. CLAY), to explain the difference between the conference report and the House bill.

Mr. Speaker, I yield such time as he may consume to the gentleman from Missouri (Mr. CLAY), the distinguished chairman of the subcommittee.

Mr. Speaker, in connection with yielding this time, I want to commend the gentleman from Missouri (Mr. CLAY) and all the conferees for the outstanding job that they did in upholding the House position and bringing back to the House a conference report which I believe each and every Member of the House who voted for the bill when it was before the House earlier this year can now again vote for.

(Mr. CLAY asked and was given permission to revise and extend his remarks.)

Mr. CLAY. Mr. Speaker, I rise in support of the conference report on H.R. 8617, the Federal Employee's Political Activities Act of 1975. This bill would amend the Hatch Act by permitting Federal employees to participate voluntarily in political activities so long as they do so on their own time, not in Government

buildings, and out of uniform.

I was privileged to serve as a House manager of this bill, under the leadership of the distinguished gentleman from North Carolina (Mr. HENDERSON). The debate between the House and Senate managers was spirited and vigorous. The managers on both sides were, however, united in the conviction that this legislation was important and should be moved with dispatch. Accordingly, it was not difficult for us to reach agreement on the major differences between the House and the Senate in this legislation.

You will be pleased to know that the House receded only on those Senate amendments which tended to tighten existing controls against improper political activities. The House conferees stood firm in preserving those features of the bill which afforded greater political protection to Federal employees while protecting the public interest. We accepted those Senate provisions which added greater strength in preserving public confidence in the integrity of Government service.

The highlights of the House-Senate conference are as follows:

PERSONAL SERVICES

House managers accepted the Senate amendment which included personal services in the definition of political contribution. While the House bill did not include this language, the committee report did specify that personal services were included in the definition of political contribution.

DATE FOR INFORMATION

The House bill requires the Commission to annually notify each employee in writing of prohibited and permitted political activities at least 60 days prior to the earliest primary or general election. The House managers accepted the Senate amendment for changing this time requirement to 120 days.

OFFICIAL INFORMATION

The House managers accepted a Senate amendment which provides that employees are not authorized to use official information for any purpose otherwise prohibited by law.

WHITE HOUSE PERSONNEL

The House managers accepted a Senate amendment which clarified that the exemption of certain White House personnel from the prohibition against political activities was not authorization for such activity. The House bill exempted certain White House personnel from the prohibition against political activity while on official duty. Language similar to the Senate amendment was

also included in the committee report of the House.

POLITICAL ACTIVITIES OF JUSTICE, IRS AND CIA EMPLOYEES

The House bill authorized all Federal employees to participate in voluntary political activities so long as they do so on their own time, off Government property, and out of uniform. The Senate amendments retained existing Hatch Act prohibitions against political contributions and other political activities for all employees of the Department of Justice, Internal Revenue Service, and the Central Intelligence Agency. The House in accepting the Senate provisions narrowed its sweeping nature by exempting from the prohibitions of existing law: First, employees in nonsensitive positions; second, employees in sensitive positions when the agency head determines that their political activities would not adversely affect public confidence; and third, presidential appointees who determine national policies. The Congress would have 30 days in which to disapprove determinations of agency heads.

LEAVE TO SEEK ELECTIVE OFFICE

The House bill provided that employees who seek full time elective office shall be assured of returning to positions, if unsuccessful, by being granted leave without pay—LWOP—at least 90 days prior to elections. The House managers accepted the Senate amendment deleting this provision. H.R. 8617 now requires that such an employee may campaign for elective office during his spare time or by utilizing accrued annual leave. The Department may, upon its option, determine to grant the employee, upon application, leave without pay.

PENALTIES

The House accepted the Senate provision which mandated a suspension without pay for any employee convicted of violating the bill's prohibitions against use of official information or authority. At our insistence the period was reduced from 90 to 30 days. The Board may, at its discretion, impose even stronger sanctions.

EFFECTIVE DATE

The House bill provides for an effective date of enactment 90 days after approval. The House managers accepted the Senate amendment delaying the effective date of the bill to January 1, 1977. Thus, the conferees deferred the bill from directly impacting upon the national elections of 1976.

BOARD AND PAY FOR MEMBERS OF CONGRESS

The House prevailed in retaining the

independent board to adjudicate alleged violations of the bill and the Senate receded on its proposal regarding pay for Members of Congress.

Mr. Speaker, H.R. 8617, as reported by the conferees, is a markedly improved piece of legislation in that it ensures greater political participation for Federal civilian and postal employees while protecting the public interest. As reported by the House-Senate conferees, H.R. 8617 now includes the following major provisions:

States that Federal employees are encouraged to exercise their right of voluntary political participation.

Prohibits the use of official authority, influence, or coercion with the right to vote, not to vote or to otherwise engage in political activity.

Prohibits use of funds to influence votes; solicitation of political contributions by superior officials; and making political contributions in Government rooms or buildings.

Prohibits political activity while on duty, in Federal buildings, or in uniform.

Prohibits the extortion of money for political purposes from Federal employees.

Retains existing prohibitions against political activities for employees in sensitive positions within the Department of Justice, Internal Revenue Service, and Central Intelligence Agency.

Requires that employees who seek elective office do so on their own time. Employees shall, upon request, be granted accrued annual leave to seek elective office.

Authorizes the Civil Service Commission to conduct educational, enforcement, and investigatory functions. Limits investigation of prohibited activities to 90 days.

Establishes an independent board whose function is to adjudicate alleged violations of law and provides for judicial review of adverse decisions.

Subjects violators of law to removal, suspension, or lesser penalties at the discretion of the board, requires 30-day suspension without pay for any employee found guilty of violating prohibition against use of official authority or influence.

Requires that the Civil Service Commission conduct a program for informing Federal employees of their rights of political participation and report annually to the Congress on its implementation.

I urge my colleagues to overwhelmingly support H.R. 8617 as reported by the House-Senate managers.

Mr. DERWINSKI. Mr. Speaker, I yield myself such time as I may consume.

(Mr. DERWINSKI asked and was given permission to revise and extend his remarks.)

Mr. DERWINSKI. Mr. Speaker, I rise in opposition to this horrendous conference committee report on H.R. 8617 with the sincere hope this body will not be a party to the perpetration of a major Bicentennial blunder which will have wide-ranging and long-lasting ramifications. What the managers of this palpably bad piece of legislation are asking us to do, under the guise of reform, is to gut the Hatch Act of 1939.

Undismayed by evidence that neither the public nor Federal employees generally want this legislation, House managers are asking us for a vote of approval. If this were to become law, "political freedom" becomes a euphemism for "partisan politics." But when you analyze the report, one inescapable conclusion remains. This legislation will, in effect, permit all of the current partisan political activities currently prohibited under the Hatch Act with certain limited exceptions.

Performing with a zeal which would make the cast of characters in Mission Impossible envious, House managers of this bill have succeeded in making a bad bill worse. For example, the House managers agreed with the Senate that H.R. 8617, as approved by the House, granted too much political freedom to some Federal employees. As a result, we now are being asked to go along with language whereby certain employees of the CIA, IRS, and Justice Department will be denied the political rights authorized in this bill, unless there is a determination by the head of the agency that such activity would not adversely affect the integrity of the Government or the public's confidence in the integrity of the Government. That, to me, is a clear admission the purported protections against coercion and intimidation in H.R. 8617 are a myth.

The acceptance by the House conferees of this Senate amendment also places them in the interesting position of favoring some employee unions while alienating others. The National Treasury Employees Union strongly opposed the amendment excluding IRS employees from the new political activities of H.R. 8617. In a letter to the conferees, NTEU President Vincent L. Connery said:

The National Treasury Employees Union, representing more than 95 percent of all IRS employees across the country, strongly op-

poses this blatantly discriminatory amendment. There is no logical reason why IRS employees should be treated as second-class citizens.

It is an interesting spectacle to watch the proponents of H.R. 8617 jettison their allies in their all-out effort to make this political balloon fly.

The House managers also accepted a Senate amendment which delays the effective date of this legislation until after the 1976 elections. If, as they contend, Federal employees are being deprived of their constitutional rights under the Hatch Act, why the delay in implementation? If they were consistent, it would seem that backers of this legislation would want this new political freedom for Federal employees to coincide with the Nation's 200th anniversary.

One of the little publicized events of the conference was the ease with which the Senate receded from its amendments that would have provided for separate consideration of congressional cost-of-living pay raises, and for postponing any congressional pay increase until after the next election. While these amendments were obviously nongermane and subject to certain procedures under the Rules of the House, nevertheless there was barely a ripple of objection among the House conferees when these amendments were dropped. I can only wonder whether political expedience overcame principle. Here again, the theme of the conference dictated that there be a Hatch Act bill at any cost.

Ironically, in their upside-down bargaining, House managers prevailed in a situation where they should have receded. I refer to their action in retaining the establishment of a three-member independent Board on Political Activities with enforcement authority over the political activities of Federal employees. What this means is the creation of still another needless agency which will have the capability of becoming a new bureaucratic power base.

During the tug-of-war on this legislation, it was argued times have changed since the Hatch Act was enacted in 1939. It was said that the Federal workforce, today, was somehow different in character and sophistication. Even if those assertions were true, there is no valid reason to rip away protections which have helped insure an impartial Government civil service.

As a matter of fact, the potential for abuse of the civil service system today is far greater than it was in 1939. Then, there were 920,000 Federal employees compared with 2.8 million today; the total budget in 1939 was \$9.5 billion as

opposed to \$324 billion in 1975; the average salary of a Federal employee in 1939 was \$1,871—as opposed to \$14,480, and in 1939 there were 77,300 Federal employees outside of Washington, D.C., compared with the 2,367,983 who now are assigned throughout the country outside of Washington.

As I mentioned earlier, widespread support for this legislation is lacking. This is borne out by a number of public opinion polls.

For example, Representative ELIZABETH HOLTZMAN, of New York, said the

results of her 1976 poll showed her constituents were against weakening the Hatch Act by a 2 to 1 margin. Senator J. GLENN BEALL of Maryland said 70 percent of the approximately 130,000 persons who responded to his poll were opposed to liberalizing the Hatch Act. The president of the Federal Executive Institute Alumni Association, Clayton Jones, said a survey of 3,000 civil service employees showed only two who supported H.R. 8617. A poll by Representative JOSEPH L. FISHER of Virginia showed that 59 percent of 20,000 respondents were against Hatch Act revisions.

Mr. Speaker, the respected National Academy of Public Administration also voiced strong warnings and objections to the Clay-McGee bill, which fell on deaf ears. The Standing Committee on Public Management and Machinery of Government, a committee of the NAPA, adopted a resolution stating that it is strongly opposed to several provisions of the Clay-McGee bill, "especially those provisions dealing with political candidacy and political management on the part of Federal employees." The resolution went on to say:

It is the view of the Committee that such provisions would seriously undermine the concept and operations of a true federal merit system.

The chairman of this committee, Mr. Dwight Ink, zeroed in on the issue in a letter to the chairman of our Committee on Post Office and Civil Service, in which he said:

I believe it would be most ironic if, at the very time the Congress is addressing the problem of how to avoid abuses of the merit system such as those discussed in your hearings and which triggered the introduction of H.R. 12080, the Congress were to open wide the doors to much more serious potential abuse through the passage of the Clay-McGee bill.

Mr. Speaker, that certainly is a valid assessment of what the House is contemplating doing today.

Despite the lack of public support, revision in the Hatch Act were embraced

by the House and the other body because of the all-out campaign mounted by leaders of Federal employee unions affiliated with AFL-CIO. They know such legislation would substantially increase their influence over Congress. Dr. Nathan Wolkowicz, president of the National Federation of Federal Employees, and an opponent of H.R. 8617, said organized labor's interest in the bill was "nothing more than the old AFL-CIO pitch for muscle and power. It is a move for money and organizing influence."

To pass this legislation is to invite a quick return to the spoils system. It certainly is an inauspicious way to start our third century as a nation.

Mr. Speaker, I urge my colleagues in the highest degree of nonpartisanship to reject this conference report.

Mr. Speaker, of course it pains me to step into the well of the House and disagree with my distinguished colleague, the gentleman from Missouri (Mr. CLAY), who has put in so much hard work on this measure, but sometimes hard work produces a monstrosity and that is the situation that we have before us.

In my statement, Mr. Speaker, I have outlined my basic views that this bill as it appears before us in the conference report is actually in worse shape than when it passed in the House. But, to refresh the memory of the Members, I would like to mention the key points that were emphasized in the original debate. I would remind the Members that the Hatch Act has withstood the test of time for some 37 years. Since we are entering into not just a Bicentennial Year, but also a political year, I would like to remind the Members that the Hatch Act was passed by an overwhelming Democratic Congress because of the political problems of abuse of Federal personnel practiced by a Democratic President, and that was the partisanship at that time.

So the Hatch Act, by banning certain partisan political activities, has successfully shielded Federal employees against coercion from their supervisors. Inherent in the Hatch Act is the belief that Federal employees cannot serve both an impartial civil service and a partisan political party or a partisan activist group, the goals of the two are just incompatible.

Let me give the Members one example. Your local friendly census employee runs for political office in the geographical area in which he has responsibility. How does this legislation prevent such an employee from using the knowledge he has acquired during his tenure in the Census Office as political information? It does not.

Another example in this day and age of the wholesale dispersion of Federal grants, a nonpartisan city manager who also happens to control the purse strings on Federal grants which are distributed in his area is urged to support a candidate for office and selects the wrong candidate, and in that case the city may suffer.

Other examples, of course, could follow, but let me tell the Members the inconsistent situation inherent in this bill. The bill provides for the return of politics into the postal service. The 1970 Postal Reorganization Act specifically bans political activities in the Postal Service. I mention the postal service at this time because it has become everybody's whipping boy and even the august Committee on the Budget has decided there shall not be one more penny provided for the postal service in view of the kind of services it has been rendering. But here they are in this bill before us turning loose 700,000 postal officials for political activities. That is what they are doing under this bill.

Then let me quote to the Members one line from the most recent Supreme Court decision—and may I remind the Member that the Supreme Court on three different occasions has sustained challenges against the Hatch Act—and in the most recent Supreme Court decision in 1973 the Court stated:

A repeal of the Hatch Act would run contrary to the judgment of history.

Mr. Speaker, in my original remarks made against the bill when it passed the House, I stated that this legislation is ill timed, ill conceived and is bad for the employees, the merit service as we know it to be, and the general public.

That was referred to as a somewhat partisan statement, so I have another statement I shall read to the Members which is as follows:

The problem is that some Federal employees whose support is desired will be coerced by their supervisors into engaging in various political campaigns. The bill's supporters purport to refute this by saying that there will be serious penalties for coercion. This argument is not persuasive. A superior has many subtle ways of pressuring an employee that are difficult to detect. The superior is often responsible for an employee's promotion or the conditions under which the employee must work. He or she can make an employee's life pleasant or difficult. The protections in this bill are simply not adequate, . . .

One other quote, Mr. Speaker:

Clearly, some persons see this bill as an effort to obtain additional campaign support in return for past actions on behalf of Federal employees.

Federal civil servants ought to be properly reimbursed for the valuable work that they do for the public. Wage increases and fringe benefits ought to be decided on the basis of what is fair and what the Government can afford. They should not be decided just on the basis of how much political muscle civil servants can bring to bear at election time.

If the Members think that is a partisan political statement, let me remind them I am quoting our highly respected colleague, the gentlewoman from New York (Ms. HOLTZMAN). That is her objective, perspective view of this issue.

(Mr. MOSHER asked and was given permission to revise and extend his remarks.)

Mr. MOSHER. Mr. Speaker, the Senate wisely accepted Senator Taft's amendment to H.R. 8617, requiring that a general election fall in the time between when Congress votes itself a pay raise and the time when that pay raise goes into effect.

I regret to note that the conferees on H.R. 8617 have deleted the Taft amendment.

I am told that the conferees felt that congressional pay raise legislation was not germane to a bill dealing with Federal employee personnel policies. This puzzles me somewhat, because our conferees did not seem to suffer similar reservations last year when they rushed to accept a different Senate amendment to a Postal Service personnel policy bill, thus linking congressional salaries to the Federal cost-of-living salary scale.

As a result of that decision—which I vigorously protested at the time—we are now in the position of seeing congressional salaries go up automatically each time Federal employees get a pay raise. Regardless of where one stands on the question of linking congressional pay raises and civil service salaries, I think we can all agree that it is bad policy for us to forever be voting on immediate salary increases for ourselves.

I said this last July when we voted on the congressional pay raise mechanism and I said it again in September when I first introduced H.R. 9336. That legislation, which now has over 90 cosponsors, provides that a congressional pay increase could not go into effect during the same Congress in which it is voted upon. Over 20 States already have similar statutes or constitutional provisions for their legislatures.

My Ohio Senator, Bob TAFT, agreed to introduce this legislation in the Senate and he also attracted a bipartisan group of cosponsors over there. This was the basis for his amendment to H.R. 8617, the so-called Hatch Act Reform Act.

Mr. Speaker, eventually we must confront the fact that it is a blatant and inherent conflict of interest for Members of Congress annually to vote on legislation that grants us immediate pay increases. That is why I believe we must cause a deferral of congressional salary increases—so that we are not voting on benefits for ourselves—until we get the public's approval by reelection.

Although H.R. 9336 was first introduced on September 3, 1975, and despite its backing by an impressive bipartisan coalition, the House Committee on Post Office and Civil Service has not yet given the slightest indication of interest in this issue. This is most unfortunate.

This is an issue, Mr. Speaker, which we must address. Later this year, we will again be in the embarrassing, awkward and improper position of having to vote on our own salaries. I say this must end; we must correct this glaring defect in the decisionmaking process.

Thus, I regret the conferees' decision to delete the Taft amendment from H.R. 8617. Now, I pledge to continue pressing for separate legislation to clean up the process by which congressional pay raises are determined.

Mr. HENDERSON. Mr. Speaker, I yield such time as she may consume to the gentlewoman from Maryland (Mrs. SPELLMAN).

(Mrs. SPELLMAN asked and was given permission to revise and extend her remarks.)

Mrs. SPELLMAN. Mr. Speaker, I rise in support of the conference report to H.R. 8617, the Federal Employees' Political Activities Act and I urge all of my colleagues to join me in supporting this vital legislation. In October of last year, when this bill was first before this body, I stated that I thought this bill represented a fair and equitable response to the needs of Federal employees. I still believe this legislation to be both fair and most equitable and once again I urge the support of my colleagues.

As a member of the Employee Political Rights Subcommittee which held extensive hearings on this bill and as a member of the conference committee, I have spent much of my first year in Congress involved in debate of the Hatch Act. A major reason for my high degree of involvement in this issue stems from the fact that I represent a district that is heavily impacted with Federal employees. In fact, subcommittee field hearings were held in my district, in the town of Riverdale, Md., as well as other similarly impacted areas. What we heard during those hearings was a strong plea to revise the restrictions of the Hatch

Act so that these employees can more freely participate in our political process.

What I heard from my own constituents reflected that plea. I announced to them that I would vote the way they told me on this issue, and they told me in overwhelming margins that they wanted changes made. I received hundreds of replies asking for liberalization of the Hatch Act so that they could freely participate in our democratic process.

Some of this desire to change the Hatch Act stems from the confusion that the vagueness of present-day regulations causes. This very vagueness acts as a restraint against the employee who considers becoming involved in any political action, leaving our political system the poorer for the loss. We all know of the apathy that exists among the electorate. Why should we continue to maintain the barricades that have kept so many Federal employees who wish to participate from doing so? Particularly today, I should think that we in the Congress would gladly do everything we could to encourage, not discourage, participation in the political process.

One very important point which must be made is that H.R. 8617, as it is reflected in the conference report before us today, increases, rather than decreases Federal employee protection in this area. In keeping with our committee's feeling that any law or legislation restricting political activities of Federal employees should do so clearly and expressly. We worked to detail carefully protections for the rights of those employees in order to avoid the confusion and apathy of the past. So, we have provisions that prohibit the use of official authority or influence for political purposes. Under this provision supervisors cannot promise benefits for or threaten reprisals against a fellow employee for political actions. The provisions, further forbid coercion of Federal employees to vote or not to vote in any manner other than that which the employee desires, and they forbid coercion, through threat of loss of job or promotion, for example, for not taking part, or for taking part, in any political activities.

This list of provisions goes on and on—all of which were incorporated into the bill as safeguard measures to protect Federal employees from coercion and corruption.

Perhaps the most important provision of this bill is that provision which establishes a centralized organization to which Federal employees can go if any of the prohibitions have been violated.

The Board of Political Activities of Federal Employees has the power to hear and decide cases involving violations of those protections. The concept of an independent board was deleted from the bill the Senate reported out. However, in the conference meeting it was decided by Members of both Houses that, because the bill already provides the Civil Service Commission with broadened educational, enforcement, and investigatory authority, the creation of an independent board to handle adjudicative functions was absolutely essential. In the other instances where the House and Senate versions of the bill differed I feel that wise decisions were made which will strengthen the bill instead of weaken it.

The basic provisions of the bill are those which were initially worked out by the Employee Political Rights Subcommittee. In addition to retaining the House language on the creation of the board, the legislation before us today reflects much hard work and is most worthy of our consideration. In the final summation, while one may argue the philosophy of this measure, no one can argue that the intent and purpose of this bill is unclear. Chairman CLAY and his subcommittee staff are to be commended for the fine work they have done. I feel this is a good bill which is deserving of wide support and I urge my colleagues to join me in restoring political rights, with adequate protection, to more than 2.8 million Federal civilian and postal employees, by supporting the conference report to H.R. 8617.

Mr. HENDERSON. Mr. Speaker, I yield such time as he may consume to the gentleman from Virginia (Mr. HARRIS).

(Mr. HARRIS asked and was given permission to revise and extend his remarks.)

Mr. HARRIS. Mr. Speaker, I am pleased today to rise in support of this conference report. It does in fact represent a great deal of work not only on the part of the chairman who has stayed with it in subcommittee and committee and on the floor and in the conference committee, but of a number of Members of this House and the Senate to achieve some reform that is drastically necessary.

I thought I heard one of my colleagues say awhile ago that the Hatch Act had effectively protected Federal employees from undue political coercion. I cannot believe that that statement could be made with the evidence that we have with respect to the improper pressures in recent years that have in fact occurred.

The fact is that we need increased pro-

tection. The fact is that 80 percent of this bill deals with increased protection of Federal workers against the type of coercion that they have been subjected to under the Hatch Act.

I think the bill does a number of important things. It creates an independent Board of Political Activity composed of Federal employees where Federal employees can go and get redress with respect to political influence that is improperly visited upon them. I think this bill means that the day of the political fundraiser going to a Federal employee and forcing him to buy that fundraising ticket is over. Maybe this may seem bad to the current administration, but it does not seem bad to the Federal employee.

I think it is important that this bill provide information programs so that the Federal employees know what their rights are and what restrictions are placed upon them. For the first time we have an information program specified in the law.

Mr. Speaker, I think it is important that this House in fact does pass this conference report. I think it is important that it gets enacted into law. The Federal employees deserve this protection; they deserve a restoration of their rights. I think that is what this bill does.

I am pleased today to support the conference report on H.R. 8617, the Federal Employees Political Activities Act of 1976. The bill we are considering today, agreed to by the House-Senate conference, is essentially the same as the bill approved on a 288-119 vote by the House on October 21. The major provisions of the House bill remain. The few changes are strengthening additions. Basically, House Members are being asked to reaffirm their previous overwhelming support for Hatch Act reform.

As we all know, Federal employees have had to cope with a myriad of vague do's and don't's under the current Hatch Act and the 3,000 administrative rulings that have flowed from it. H.R. 8716 clarifies in clear terms what one can and cannot do. It does not leave one's rights up to administrative discretion or whim.

More important, this bill contains strong, new protections not found in current law. It preserves a nonpartisan merit system and the impartial administration of our laws; it maintains the integrity of Government by keeping politics out of Government. Twenty of the bill's 24 pages lay out explicit new protections, for the employee and the Government. Specifically, the bill prohibits the following: The use of one's official authority to influence, coerce, threaten or intimidate

another to engage or not engage in political activity; political activity on the job, in Federal buildings or in uniform; solicitation of funds or the making of contributions—including personal services—in Government buildings; the extortion of money for political purposes from Federal employees; the use of Government supplies and facilities for political purposes.

The conference version retains the independent Board on Political Activities of Federal Employees to hear and decide violations of this law. Penalties for violations of the law are spelled out, including removal from employment and suspension. The bill includes a mandatory minimum suspension of 30 days for employees found guilty of violating the restrictions on misuse of official authority or influence.

An important Senate addition to the bill which I raised in the House relates to the White House staff. The House-passed bill exempted White House staffers from certain political activity restrictions, such as engaging in politics on the job. In additional views to the House Committee report, I expressed my concern that this exemption might be construed to mean Congressional approval of campaigning on the public's time in the White House. I am pleased that the Senate has clarified the bill to insure that the exemption of White House personnel does not mean Congress is giving the green light to such activities.

A final and significant feature of this bill is the educational requirement. Most Federal workers complain that they are never sure about what they can and cannot do under the Hatch Act. They are afraid to become involved because their rights are subject to so much discretionary interpretation. This bill requires the Civil Service Commission to conduct a continuing program to inform Federal employees of their rights to political participation and the restrictions on them. Each employee would be informed once a year of his or her rights and the restrictions on political activities—a great improvement over the present situation which can be described as "limbo," at best.

Thus, what we have today is a bill that in clear, understandable terms enunciates the political rights of and restrictions on our 2.8 million Federal and postal employees. The heart of the bill, indeed 80 percent of the bill, is protection—prohibition against abuse, prohibition against politicizing the Federal establishment. These new provisions, now absent from current law, protect the pub-

lic interest. If this bill fails to become law, we will fall back into that vague mish-mash that has followed nothing but confusion to reign supreme. Under the current Hatch Act "proscriptions," we saw the worst political abuse of our Government, during the Watergate era. Surely there is a better way. This bill is a fitting step forward.

Mr. DERWINSKI. Mr. Speaker, I yield 5 minutes to the gentleman from Maryland (Mr. GUDE).

(Mr. GUDE asked and was given permission to revise and extend his remarks.)

Mr. GUDE. Mr. Speaker, I vigorously oppose this conference report on H.R. 8617 and will urge the President to veto the measure should the report be passed by the House today.

Congressman JOE FISHER, Democrat, of Virginia, and I who represent the two congressional districts with the highest percentage of Federal employees fought hard to defeat this measure when it passed the House last October. Significantly, all four Senators from Maryland and Virginia, the States with the highest percentage of Federal workers, also opposed the measure when it passed the Senate several weeks ago.

It is difficult for me to understand why this legislation, coming so soon after monumentous political abuses at the highest level of office, passed the House in the first place.

For years, the Hatch Act has allowed Government workers to say "No" to partisan politics, partisan fund solicitations, and partisan attempts to sway the day-to-day decisions that affect all our lives.

A "hatched" employee is not disenfranchised. Government employees can and do register in the party of their choice or as independents and vote.

Government workers can express their opinions on all subjects and candidates both privately and publicly, may wear political buttons and put bumper stickers on their cars, and may make campaign contributions if they choose to.

They can be candidates in nonpartisan elections.

I have been representing my district in Montgomery County, Md., a suburb of Washington, D.C. which houses thousands of civil servants, since 1953 when I entered the Maryland House of Delegates. In the 20 years I have held elective public office in this country, I never felt that its civil servants wanted to exchange their protections under the Hatch Act for certain freedoms to participate in partisan political activities.

As I have repeatedly stated, these changes may "free" the civil servant to

be coerced, may "free" him to face enormous partisan pressures and may "free" him to have to put his job on the line in a complaint against a supervisor seeking political funds.

That the public and civil servants themselves do not want these changes has been substantiated in public opinion polls by Representatives FISHER and HOLTZMAN and also in my own State with a recent poll taken by Senator J. GLENN BEALL.

The American Society of Public Administration, the Civil Service League, and the National Federation of Federal Employees, as well as other professional organizations also oppose liberalizing the Hatch Act restrictions.

This legislation is both unwise and unfair to the bulk of rank and file civil servants who have not asked for and in fact do not want such repeal of existing Hatch Act prohibitions.

I strenuously urge you to vote against this conference report.

Mr. SYMMS. Mr. Speaker, will the gentleman yield?

Mr. GUDE. I yield to the gentleman from Idaho.

Mr. SYMMS. Mr. Speaker, I thank the gentleman for yielding.

I would like to say to the gentleman I quite agree with his position. The last time when we had this bill on the floor I was a little bit at a loss as to whether I wanted to vote for or against the bill because it was one of those issues that did not seem quite clear to me. Since the time the bill was passed, I have gone back to my district where the largest employer is the U.S. Forest Service and the second largest employer is the Bureau of Land Management. I have talked to many of the individuals who work in those agencies and I have been at dinners with many of them. I have asked the question: "How do you feel about the Hatch Act?" I have never found one of those people who wanted the Hatch Act repealed. They want to keep their jobs separated from political activities particularly those in the research areas do not want this act changed. They want to leave it as it is.

Mr. GUDE. I commend the gentleman on finding out the feeling of his constituents, the rank and file civil servants.

Mr. SYMMS. I thank the gentleman.

Mr. DERWINSKI. Mr. Speaker, I yield 5 minutes to the gentleman from Texas (Mr. COLLINS).

(Mr. COLLINS of Texas asked and was given permission to revise and extend his remarks.)

Mr. COLLINS of Texas. Mr. Speaker, no matter what version of H.R. 8617, Hatch Act amendments, House or Sen-

ate, you consider, it remains unacceptable.

The legislation effectively repeals the Hatch Act, which has helped to protect Federal employees from coercive partisan political activity.

Therefore, for all practical purposes, the objections you raised in the minority views against this legislation still exist.

Passage of this legislation will permit Federal employees to freely engage in partisan political activity, that is, fund raising, political campaigning, soliciting votes, involvement in political party functions, et cetera.

The overriding point to remember is that while the prohibitions in H.R. 8617 are the minimum necessary protections for Federal employees from widespread political pressure, it should be carefully borne in mind that all of the other activities currently prohibited under the Hatch Act would be permitted if this bill were to become law.

Apart from the concern to protect all Federal employees from improper, coercive political pressures, the other casualty in this process would be the public. Partisan political activity will, no doubt, greatly erode public confidence in the impartial administration of the Federal Government.

Justice Reed may have stated it best in the Mitchell case:

The influence of political activity by government employees, if evil in its effects on the service, the employees, or people dealing with them, is hardly less so because the activity takes place after hours.

Mr. DERWINSKI. Mr. Speaker, I yield 5 minutes to that dedicated Member, the gentleman from California (Mr. ROUSSELOT).

(Mr. ROUSSELOT asked and was given permission to revise and extend his remarks.)

Mr. ROUSSELOT. Mr. Speaker, I am disappointed that this conference legislation (H.R. 8617) does not retain the House-passed 90-day provision that a Hatch Act employee would be required to take a leave of absence from work for 90 days prior to a primary election and 90 days prior to a general election. That normally is the procedure in the private sector for most employees who run for Federal political office.

I must admit because we were having votes on the House floor during the afternoon that we held the conference, I was not able to shuttle back from the conference quick enough to protect the 90-day provision for both the primary and the general election from being deleted by the Senate conferees. I am extremely

disappointed that we did not retain that provision which was included in the House bill.

Mr. Speaker, additionally, I am somewhat disturbed by the letter dated, March 29, that we received from our colleagues, the gentleman from Maryland (Mr. GUDE) and the gentleman from Virginia (Mr. FISHER), who do represent together the largest number of Federal employees of any of us here in the House of Representatives. Mr. FISHER, I understand, has over 60,000 Federal civil servants and Mr. GUDE about 50,000.

Therefore, Mr. Speaker, I was very disturbed in reading this correspondence to learn that the Federal employees in their districts have substantial doubts about this legislation. Evidently both of

our colleagues have received significant numbers of objections from civil servants in their two districts. Let me quote from that letter by Mr. FISHER and Mr. GUDE:

We believe that this legislation would expose Federal employees to subtle pressures to campaign for or otherwise support political candidates. Furthermore, the changes would undermine the public's confidence in the neutrality and impartiality of civil servants. In this post-Watergate period, we think that this is the last thing the country needs.

The Conference Report exempts from the legislation employees in the CIA, IRS, and the Justice Department in sensitive positions except as the agency head determines by regulation that active political participation by people in those positions would not adversely affect the integrity of the government. Any protection provided by exempting sensitive employees from political activity can be reversed by the action of the agency head. In effect, there is no guarantee that these agencies will not be politicized.

It is important to note also that the conferees have removed a provision requiring civil servants who run for political office to take a 90 day leave of absence, before an election.

Polls by Representative Fisher, Representative Holtzman, and Senator J. Glenn Beall all substantiate the public's opposition to these changes. The American Society for Public Administration, the Civil Service League and the National Federation of Federal Employees as well as other professional organizations are also opposed to H.R. 8617. We hope that you will respect the concerns of the employees directly involved and vote against this conference report.

Mr. Speaker, I would like to address some questions to my colleague, the gentleman from Virginia (Mr. FISHER), who I see is on the floor. The gentleman from Maryland (Mr. GUDE) has just spoken and raised the objections he has received. Mr. FISHER, what are the main reservations that the Federal employees who are presently under the Hatch Act in your district have about this legis-

lation?

Mr. Speaker, I yield to my colleague, the gentleman from Virginia (Mr. FISHER).

Mr. FISHER. Mr. Speaker, their main reservation, and it comes through very clearly from polls I have taken and many conversations I have had, the main reservation is that in exchange for some additional political participation, they give up the protection of the Civil Service that they had for the most part over the years against undue pressure and influence on them by supervisory and more politically inclined people in the Government.

Mr. ROUSSELOT. Well, on that point, I, too, was very concerned about potential political pressure that could either be brought by supervisors and or Federal union leaders.

Could the gentleman define more clearly what the gentleman thinks that problem is? I thought we had partially solved that problem in the legislation before us but I would like to have the gentleman's comments.

Mr. FISHER. Perhaps an example will help. Say there is a vacancy in the Civil Service position and there are three employees more or less equally well-qualified to take that spot.

One of them is in the other party, the party, let us say, of the supervisor. The other two are in the other party, and they are all more or less well qualified. It is pretty clear which one is likely to be chosen to fill the job and have the advancement in his career and the higher pay.

This illustrates, I think quite vividly, why so many experienced civil servants look upon this as a poor bargain for them to get a little more participation privilege in exchange for the risks and uncertainties in terms of their salaries and their career advancement, their general working conditions.

Mr. ROUSSELOT. I am sorry to hear that, because I felt in the legislation that we had tried to establish adequate protections for the problem you have outlined in your illustration.

The SPEAKER. The time of the gentleman from California has expired.

Mr. DERWINSKI. Mr. Speaker, I yield 3 additional minutes to the gentleman from California.

Mr. ROUSSELOT. I thank my colleague for yielding. I am concerned that both my colleague from Maryland (Mr. GUDE) and my colleague from Virginia (Mr. FISHER) are not totally satisfied that this legislation does in fact provide adequate protection to the civil servant who

does not wish to be coerced or pushed into political action. I find that most disturbing.

Mr. FISHER. If the gentleman will yield further, I find what the gentleman in the well is saying to be persuasive, and it conforms very accurately with what I find when I consult with the very large number of civil servants living in my district. They make up about one-third of the employment in my district.

Mr. ROUSSELOT. One-third of the gentleman's constituency is Federal civil servants? I understand you have over 60,000 Federal civil servants.

Mr. FISHER. Roughly, or that work for the Federal Government.

Mr. ROUSSELOT. That is a substantial number, and I am sure that this will force us to make sure the record is clear just how much protection is provided. I am very disturbed that my colleague from Maryland (Mr. GUDE) and my colleague from Virginia (Mr. FISHER) who represent the largest number of Federal employees, do not find that protection to be present in the bill. I voted for this bill when it left the House, feeling that we had adequate protection.

Mr. HARRIS. Mr. Speaker, will the gentleman yield?

Mr. ROUSSELOT. I am happy to yield to my other colleague from Virginia.

Mr. HARRIS. I was wondering if my good friend and esteemed colleague, who did vote for the bill—

Mr. ROUSSELOT. I certainly did.

Mr. HARRIS (continuing). Was equally disturbed when the two colleagues he now refers to voted against the bill when it came up?

Mr. ROUSSELOT. I must be direct with my good colleague from Virginia (Mr. HARRIS) and say that I did not track the final vote of the gentleman from Virginia (Mr. FISHER) and the gentleman from Maryland (Mr. GUDE) on the House bill. I know the gentleman from Virginia

(Mr. FISHER) had a very specific substitute amendment, when the bill was on the House floor, but at the time I did not track their two votes on final passage. I of course now know they did not vote for final passage. But their letter of March 29 emphasizes a reasonably based concern, and I think we should at least listen to them. Because they both together represent so many Federal employees.

Mr. KETCHUM. Mr. Speaker, will the gentleman yield?

Mr. ROUSSELOT. I yield to my great colleague from Kern County, Calif., which has Edwards Air Force Base and many other Federal installations.

Mr. KETCHUM. I thank the gentle-

man for yielding to me. Does the gentleman recall not too long ago, in line with his concern, not too long ago a group of us were studying the regional office of HUD, in San Francisco?

Mr. ROUSSELOT. I remember that very well.

Mr. KETCHUM. And our studies indicated that of all of the upper level people in HUD, only three were Republicans and the rest were Democrats, and the Hatch Act would not have much to do with those, apparently.

Mr. ROUSSELOT. I understand the point my colleague is making, I have been concerned for some time about what I consider to be the political imbalance in some agencies, but I must be honest in saying that I am concerned about the points that have been made by the gentleman from Maryland (Mr. GUDE) and the gentleman from Virginia (Mr. FISHER). I thought we had provided appropriate protection against political pressures.

The SPEAKER. The time of the gentleman has expired.

Mr. HENDERSON. Mr. Speaker, I yield 2 additional minutes to the gentleman from California (Mr. ROUSSELOT).

Mr. CLAY. Mr. Speaker, will the gentleman yield?

Mr. ROUSSELOT. Mr. Speaker, I yield to my colleague, the gentleman from Missouri (Mr. CLAY), the chairman of the subcommittee which introduced this legislation.

Mr. CLAY. I thank the gentleman for yielding.

Mr. Speaker, I certainly want to commend the gentleman in the well for the number of hours he devoted to developing H.R. 8617, and I am quite certain that he is familiar with and well aware of the study that was made by the University of Michigan Social Service Research Center, which is the most exhaustive, most professional survey ever done on Federal Government employees.

The question I would like to pose to the gentleman is that, in light of his knowledge of the results of that survey, he ought to pose a question to the gentleman from Maryland (Mr. GUDE) and the gentleman from Virginia (Mr. HARRIS) and the gentleman from Virginia (Mr. FISHER), who talks about the fact that they have surveyed these employees who constitute such a great number of their constituents.

Mr. ROUSSELOT. I think the gentleman from Virginia (Mr. FISHER) said that one-third of all of his constituents

are Federal civil servants, so I would have to assume that he has some contact with his constituents.

Mr. CLAY. Right. The question I am posing to the gentleman is that they have surveyed so many Federal employees, and they find that their constituents are not in favor of changing the Hatch Act. I think the question the gentleman ought to pose to them should be based on the results of the University of Michigan survey, which points out specifically—and it is documented—that almost 90 percent of all of the Federal employees do not even know what the Hatch Act is.

Mr. ROUSSELOT. That is why my amendment, to require that prior to every election each Federal civil servant receive a clear list of political do's and don'ts so that they will have a better understanding of what they can and cannot do as Federal civil servants. I am glad the gentleman, my subcommittee chairman, accepted my amendment on that subject.

The SPEAKER. The time of the gentleman from California has again expired.

Mr. DERWINSKI. Mr. Speaker, I yield 1 additional minute to the gentleman from California (Mr. ROUSSELOT).

Mr. ROUSSELOT. Mr. Speaker, let me, in response to my colleague from Missouri (Mr. CLAY) ask the gentleman from Virginia (Mr. FISHER) what kind of polls he took among his constituency and, let him respond, to the results of the Michigan study.

Mr. FISHER. If the gentleman will yield, I took a poll some months ago, and I received about 24,000 responses. Let us say that one-third of the responses were from Federal people, and it comes out about 59 percent not wanting any change in the Hatch Act at all. I did not go that far and offer an amendment which was in the nature of a compromise, which would have permitted political participation in running for State and local offices, which is way over 90 percent of all of the offices available in the country, and would have preferred something along that line.

Mr. ROUSSELOT. Maybe the gentleman from Virginia and the gentleman from Missouri will have a chance later in this debate to discuss the differences between what the gentleman, Mr. FISHER, found in his poll and the results of the Michigan study of which Mr. CLAY spoke.

I think there was also an additional study by some civil service employees the National Federation of Federal Employees where they surveyed 30,000 Federal employees across the country. We in this House nearly need more information from Federal civil servants as to how strongly as a group they genuinely support this bill.

Mr. DERWINSKI. Mr. Speaker, I yield 2 minutes to the distinguished minority leader, the gentleman from Arizona (Mr. RHODES.)

(Mr. RHODES asked and was given permission to revise and extend his remarks.)

Mr. RHODES. Mr. Speaker, I would like to remind my friends in the Congress that this is a bill which was passed by a Democratic Congress. It is not a partisan matter. It is a bill which I think has served the country well and should be retained.

Mr. Speaker, this is not an attempt to keep anybody from participating in public life. As a matter of fact, Federal employees can participate in certain political activities.

All this does is to keep the Federal employee from being victimized by those who would like to make him, as a prerequisite for keeping his job or present assignment, participate in political activities, even to the extent of having to contribute to one party or the other.

I think that would be wrong. I think it would be deleterious toward the independence of the civil service, and I certainly oppose it with everything I have and with all the power in my command.

I would like to say also, Mr. Speaker, that I have just received word that there is a very definite veto signal on this bill. The President has said that he will veto it if it is passed by both the Houses of Congress, so we can expect that if this conference is agreed to and this is sent to the President in the form of a bill, it will be vetoed.

It seems to me it would be vain, therefore, to try to send this to the White House. I feel certain that if it is vetoed, a sufficient number of the Members of this House will have the good sense to sustain the veto. So let us stop it right now. This is a bad bill. Let us vote "no" on the conference report.

Mr. DOMINICK V. DANIELS. Mr. Speaker, I rise in support of the conference report on H.R. 8617. This legislation modifies the Hatch Act by permitting Federal, civilian, and postal employees to participate voluntarily, and as private citizens in political activities.

I wish to commend Chairman CLAY and the members of the Subcommittee on Employee Political Rights and Intergovernmental Programs for their hard work on this legislation. During the course of extensive hearings held both here in Washington and around the Nation, it was apparent that the Hatch Act needs to be reformed. These findings underscored the recommendations of the Com-

mission on Political Activity of Governmental Personnel which was created in 1966 to review the Hatch Act and make suggestions for change. The Commission found that the present Federal Hatch Act is confusing, ambiguous, restrictive, negative in character, and possibly unconstitutional. The commissioners believed that changes should be made which clarify prohibitions, increase participation, and reflect a positive tone so that employees would be encouraged to participate in permissible activities.

I believe the legislation before us today addresses these concerns and recommendations of the Commission on Political Activity, while guarding against abuses, such as the coercion of public servants to participate involuntarily in political activity.

Mr. Speaker, the historical record is replete with evidence that many of the regulations developed under the Hatch Act are violative of the first amendment. This situation has come about because

the Hatch Act incorporates all of the pre-1940 rulings of the Civil Service Commission. When Congress passed the act in 1940 it did not know that it was passing into law some 3,000 decisions of the Civil Service Commission which would be used as the broad base for defining allowable activity under the act. Of these 3,000 rulings there are some which are classic examples of unconstitutionality. In one case of which I know, a mail carrier was dismissed from Federal service because he attended meetings of the Jehovah's Witnesses' Society and distributed certain religious literature of that organization. Because the society was critical of certain political leaders and certain governmental policies at that time, this particular mail carrier's participation was judged to be in conflict with the law, and he was dismissed from the postal service, even though he promised to withdraw from religious activities. This ruling could hardly withstand a first amendment analysis, and yet it is still a part of the definition of proscribed political activity. I doubt that my congressional colleagues would be willing to allow the rights of over 2 million Government workers to depend upon administration nullification of this ruling when the first amendment is at stake.

Mr. Speaker, I will not launch into a detailed analysis of all the constitutional flaws of the Hatch Act. I simply wish to put on record my support for this conference report, and ask my colleagues to join with me in voting for its passage. However, I do ask permission of the

chairman to revise and extend my remarks so that I may include some of the historical documentation to which I have made brief reference in this statement.

Mr. DERWINSKI. Mr. Speaker, I have no further requests for time.

Mr. HENDERSON. Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

The SPEAKER. The question is on the conference report.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. DERWINSKI. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 241, nays 164, not voting 27, as follows:

[Roll No. 143]

YEAS—241

Abzug	Baucus	Breaux
Adams	Beard, R.I.	Brinkley
Addabbo	Bedell	Brodhead
Alexander	Bergland	Brooks
Allen	Blaggi	Brown, Calif.
Ambro	Bingham	Buchanan
Anderson, Calif.	Blanchard	Burke, Calif.
Annunzio	Blouin	Burke, Mass.
Ashley	Boland	Burton, John
Aspin	Bolling	Burton, Phillip
Badillo	Bonker	Carney
Baldus	Bowen	Carr
	Brademas	Chappell
Clay	Jordan	Rangel
Cochran	Kastenmeier	Rees
Collins, Ill.	Ketchum	Reuss
Conte	Keys	Richmond
Conyers	Koch	Rinaldo
Corman	Krebs	Risenhoover
Cornell	Krueger	Roberts
Cotter	LaFalce	Roe
Coughlin	Leggett	Roncallo
D'Amours	Lehman	Rooney
Daniels, N.J.	Lent	Rose
Danielson	Levitas	Rosenthal
Davis	Litton	Rostenkowski
de la Garza	Lloyd, Calif.	Roush
Delaney	Lloyd, Tenn.	Rousslot
DeLums	Long, La.	Roybal
Dent	Lundine	Russo
Derrick	McDade	Ryan
Diggs	McFall	St. Germain
Dingell	McHugh	Santini
Dodd	McKinney	Sarasin
Downey, N.Y.	Madigan	Sarbanes
Drinan	Maguire	Scheuer
Early	Mathis	Schroeder
Eckhardt	Matsunaga	Sharp
Edgar	Mazzoli	Shipley
Edwards, Calif.	Meeds	Simon
Ellberg	Melcher	Sisk
Emery	Metcalfe	Slack
Evans, Colo.	Meyner	Smith, Iowa
Evans, Ind.	Mezvinsky	Solarz
Fasell	Mikva	Spellman
Fithian	Miller, Calif.	Staggers

Flood	Mills	Stanton,
Florio	Mineta	James V.
Flowers	M'nish	Stark
Foley	Mink	Steed
Ford, Mich.	Mitchell, Md.	Stephens
Ford, Tenn.	Mitchell, N.Y.	Stokes
Fraser	Moakley	Stuckey
Gaydos	Moffett	Studds
Gaiamo	Mollohan	Symington
Gibbons	Moorhead, Pa.	Thompson
Gilman	Morgan	Thornton
Ginn	Moss	Traxler
Green	Mottl	Tsongas
Hall	Murphy, Ill.	Ullman
Hamilton	Murphy, N.Y.	Van Deerlin
Hanley	Murtha	Vander Veen
Hannaford	Natcher	Vanik
Harkin	Nedzi	Vigorito
Harrington	Nichols	Walsh
Harris	Nolan	Waxman
Hawkins	Nowak	Weaver
Hays, Ohio	Oberstar	Whalen
Hechler, W. Va.	Obey	Wilson, C. H.
Hefner	O'Hara	Wilson, Tex.
Helstoski	O'Neill	Winn
Hillis	Ottinger	Wirth
Horton	Patten, N.J.	Wolf
Howard	Patterson,	Wright
Hughes	Calif.	Yates
Hungate	Pattison, N.Y.	Young, Alaska
Jacobs	Perkins	Young, Ga.
Jeffords	Peyster	Young, Tex.
Jenrette	Pike	Zablocki
Johnson, Calif.	Freyer	Zeferetti
Johnson, Colo.	Price	
Jones, Tenn.	Railsback	

NAYS—164

Abdnor	Conlan	Hagedorn
Anderson, Ill.	Crane	Haley
Andrews,	Daniel, Dan	Hammer-
N. Dak.	Daniel, E. W.	schmidt
Archer	Derwinski	Hansen
Armstrong	Devine	Harsha
Ashbrook	Dickinson	Heckler, Mass.
AuCoin	Downing, Va.	Henderson
Bafalis	Duncan, Oreg.	Hicks
Bauman	Duncan, Tenn.	Hightower
Beard, Tenn.	du Pont	Holt
Bennett	Edwards, Ala.	Holtzman
Bevill	English	Howe
Boggs	Erlenborn	Hubbard
Breckinridge	Esch	Hutchinson
Broomfield	Eshelman	Hyde
Brown, Mich.	Evins, Tenn.	Ichord
Brown, Ohio	Fenwick	Jarman
Broyhill	Findley	Jones, N.C.
Burgener	Fish	Jones, Okla.
Burke, Fla.	Fisher	Kasten
Burleson, Tex.	Flynt	Kazen
Burlison, Mo.	Forsythe	Kelly
Butler	Fountain	Kemp
Byron	Frenzel	Kindness
Carter	Frey	Lagamarsino
Cederberg	Fuqua	Landrum
Clancy	Goldwater	Latta
Clawson, Del.	Gonzalez	Long, Md.
Cleveland	Goodling	Lott
Cohen	Gradison	Lujan
Collins, Tex.	Grassley	McClory
Conable	Gude	McCloskey

McCollister	Richard	Steelman
McDonald	Quile	Steiger, Ariz.
McEwen	Quillen	Steiger, Wis.
McKay	Randall	Sullivan
Mahon	Regula	Symms
Mann	Rhodes	Talcott
Martin	Robinson	Taylor, Mo.
Michel	Rogers	Taylor, N.C.
Millard	Runnels	Teague
Miller, Ohio	Ruppe	Thone
Montgomery	Satterfield	Treen
Moore	Schneebeli	Vander Jagt

Moorhead,	Schulze	Waggonner
Calif.	Sebelius	Wampler
Mosher	Seiberling	Whitehurst
Myers, Ind.	Shriver	Wiggins
Myers, Pa.	Shuster	Wilson, Bob
Neal	Sikes	Wylder
O'Brien	Skubitz	Wylie
Passman	Smith, Nebr.	Yatron
Pettis	Snyder	Young, Fla.
Pickle	Spence	
Poage	Stanton,	
Pressler	J. William	

NOT VOTING—27

Andrews, N.C.	Hébert	Nix
Barrett	Heinz	Pepper
Bell	Hinshaw	Riegle
Biester	Holland	Rodino
Chisholm	Johnson, Pa.	Stratton
Clausen,	Jones, Ala.	Udall
Don H.	Karth	White
Fary	McCormack	Whitten
Guyer	Macdonald	
Hayes, Ind.	Madden	

The Clerk announced the following pairs:

On this vote:

Mr. Rodino for, with Mr. Johnson of Pennsylvania against.
 Mr. Pepper for, with Mr. Hébert against.
 Mr. Nix for, with Mr. Whitten against.
 Mr. Fary for, with Mr. Guyer against.

Until further notice:

Mr. Jones of Alabama with Mr. Andrews of North Carolina.
 Mr. Barrett with Mr. Heinz.
 Mr. McCormack with Mr. Udall.
 Mr. Macdonald of Massachusetts with Mr. White.
 Mr. Karth with Mr. Bell.
 Mr. Stratton with Mr. Biester.
 Mr. Hayes of Indiana with Mr. Madden.
 Mr. Holland with Mr. Riegle.
 Mrs. Chisholm with Mr. Don H. Clausen.

Mr. McKAY changed his vote from "yea" to "nay."

So the conference report was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. HENDERSON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the conference report on the bill H.R. 8617 just agreed to.

The SPEAKER. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

CORRECTING THE ENROLLMENT OF H.R. 8617

Mr. HENDERSON. Mr. Speaker, I ask unanimous consent for the immediate consideration of the concurrent resolution (H. Con. Res. 596) directing the

Clerk of the House of Representatives to make corrections in the enrollment of H.R. 8617.

The Clerk read the concurrent resolution, as follows:

H. CON. RES. 596

Concurrent resolution relating to the enrollment of the bill H.R. 8617

Resolved by the House of Representatives (the Senate concurring), That in the enrollment of the bill (H.R. 8617), to restore to Federal civilian and Postal Service employees their rights to participate voluntarily, as private citizens in the political processes of the Nation, to protect such employees from improper political solicitation, and for other purposes, the Clerk of the House of Representatives shall make the following corrections:

(1) on page 1, line 4, of the House engrossed bill, strike out "1975" and insert in lieu thereof "1976".

(2) in section 7324(b) of title 5, United States Code, as amended by the conference substitute to Senate amendment numbered 12 by striking out "this subsection" in paragraph (1) and inserting in lieu thereof "this section", and by striking out "subparagraph (A)" in paragraph (3) and inserting in lieu thereof "subparagraph (B)".

(3) on page 7 of the House engrossed bill, strike out line 11 and insert in lieu thereof the following:

"§ 7326. Candidates for elective office; leave, notification by employees

(4) on page 10, line 4, of the House engrossed bill, strike out "employee" and insert in lieu thereof "employee,".

(5) on page 15, line 12, of the House engrossed bill, strike out "subpenas" and insert in lieu thereof "subpenas,".

(6) on page 21 of the House engrossed bill, strike out lines 18 through 22,

(7) on page 21, line 23, of the House engrossed bill, strike out "(2)" and insert in lieu thereof "(b) (1)".

(8) on page 22, line 1, of the House engrossed bill, strike out "(3)" and insert in lieu thereof "(2)".

(9) on page 22, line 8, of the House engrossed bill, strike out "(4)" and insert in lieu thereof "(3)".

(10) on page 22, line 11, of the House engrossed bill, strike out "(5)" and insert in lieu thereof "(4)".

(11) on page 22 of the House engrossed bill, in the matter below line 13, strike out the item relating to section 7326 and insert in lieu thereof the following:

"7326. Candidates for elective office; leave, notification by employees.

(12) on page 23, line 7, of the House engrossed bill, strike out "§ 614" and insert in lieu thereof "§ 618".

(13) on page 23, in the matter below line 19, strike out "614" and insert in lieu thereof "618", and

(14) on page 24, strike out lines 13 through 20.

Mr. HENDERSON (during the read-

ing). Mr. Speaker, I ask unanimous consent that further reading of the concurrent resolution be dispensed with and that it be printed in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

The SPEAKER. Is there objection to the request of the gentleman from North Carolina for the immediate consideration of House Concurrent Resolution 596?

There was no objection.

The concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

CONGRESSIONAL RECORD

SENATE

March 31, 1976

FEDERAL EMPLOYEES POLITICAL ACTIVITIES ACT OF 1975—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order, the Chair lays before the Senate a report of the committee of conference on H.R. 8617, which will be stated by title.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 8617) to restore to Federal civilian and Postal Service employees their rights to participate voluntarily, as private citizens, in the political processes of the Nation, to protect such employees from improper political solicitations, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the RECORD of March 23, 1976, beginning at page H2235.)

Mr. ROBERT C. BYRD. Mr. President, is there a time agreement on the conference report?

The PRESIDING OFFICER. There is a time agreement of 1 hour, equally divided between the Senator from Wyoming (Mr. McGEE) and the Senator from Hawaii (Mr. FONG).

Mr. ROBERT C. BYRD. Mr. President, while awaiting Mr. McGEE's arrival from the cloakroom, I ask unanimous consent to proceed for 2 minutes without the time being charged to either side on the conference report.

The PRESIDING OFFICER. Without objection, it is so ordered.

FEDERAL EMPLOYEES POLITICAL ACTIVITIES ACT OF 1975—CONFERENCE REPORT

The Senate continued with the consideration of the conference report on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 8617), to restore to Federal civilian and Postal Service employees their rights to participate voluntarily, as private citizens, in the political processes of the Nation, to protect such employees from improper political solicitations, and for other purposes.

Mr. McGEE. Mr. President, what is the pending issue before the Senate?

The PRESIDING OFFICER. The conference report on H.R. 8617.

Mr. McGEE. Mr. President, I ask unanimous consent for the yeas and nays on the pending measure, the conference report on H.R. 8617.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. McGEE. Mr. President, the conference report on H.R. 8617 represents a fair compromise between the Senate and House of Representatives on the proposed amendments to the Hatch Act. It retains many of the significant amendments which resulted from the debate here in the Senate. The major exception to that statement concerns the two Senate floor amendments affecting the subject of pay adjustments for Members of Congress.

In conference, the managers on the part of the House were quick to point out that the Allen amendment, which I personally had supported here on the floor, and the Taft amendment were not germane to the subject at hand, which was the restoration to Federal civilian and Postal Service employees of their right to participate voluntarily in the political processes of the Nation. Because of the nongermaneness of those two amendments, our colleagues from the House would not and could not accept them. Consequently, and with considerable reluctance, especially because of the significant Senate vote in favor of the Senator from Alabama's (Mr.

ALLEN's) proposal to provide for a separate vote on any annual pay adjustment for Members, the Senate's conferees agreed to recede and strike title II from the bill as passed by the Senate.

Many of the numbered Senate amendments involve technical or clerical matters, so in explaining the agreement reached by the conferees I shall address the issues as they were considered on the floor of the Senate earlier this month.

The House recedes to the Senate position with regard to the amendment by the Senator from Massachusetts (Mr. BROOKE) specifically including the provision of personal services within the definition of a political contribution for purposes of the act, in the joint explanatory statement of the committee of conference the conferees state our understanding that the amendment does not prohibit an employee from voluntarily contributing his personal services, except to the same extent that political contributions are otherwise prohibited. Nor is it the understanding of the conferees that this amendment would require the placing of a dollar value on a contribution in the form of personal services freely and voluntarily rendered. The amendment to the Senate amendment agreed upon by the conferees simply corrects a typographical error in the engrossed bill.

On the floor, Senators will recall, an amendment by the Senator from Maine (Mr. HATHAWAY) was adopted, though a substantial portion of it was later deleted from the bill by further amendment. The remaining portion of the Hathaway amendment, requiring that the Civil Service Commission annually advise employees of their rights and prohibitions with regard to political activity 120 days before the earliest primary or general election in the State where they are employed instead of 60 days before an election, as was provided in the House bill, remains in the bill. The House recedes, as it does in the case of the Senate committee amendment providing that nothing in section 7323 of the bill shall be construed as authorizing any employee to use any information coming to him in the course of his employment or official duties for any purpose where otherwise prohibited by law. In the case of that amendment, the House recedes with a clarifying amendment which in no way changes the substance.

The House also recedes with an amendment from its disagreement with the amendment proposed by the Senator from Iowa (Mr. CLARK). The amendment adds to the proviso that nothing in

section 7325 shall be construed to authorize White House employees to engage in political activity. The added words are "otherwise prohibited by or under law." Thus, the bill would provide that these individuals who are exempted from the prohibitions of section 7325 cannot thereby be construed as authorized to engage in political activity prohibited by or under other laws.

The numbered amendments 12 and 15 derive from the floor amendment to the bill sponsored by the Senator from Kansas (Mr. DOLE), which as it passed the Senate would have maintained the prohibitions of current law for employees of the Department of Justice, the Central Intelligence Agency, and the Internal Revenue Service. Again, the House has agreed to recede with an amendment which narrows the scope of the Senate amendment somewhat and retains the present Hatch Act proscriptions for a smaller number of employees.

Employees of the agencies named, under the provisions of the conference committee's agreement, would remain under the present Hatch Act restrictions unless they met one of three conditions, in which case their rights to political activity would be those provided for in the bill. The broader rights of political participation would be available to: First, employees who are not in sensitive positions; second, employees who, though in sensitive positions, occupy positions which the head of the agency has determined by regulation can be subject to the provisions of H.R. 8617 because political activity by an individual in that job would not adversely affect the integrity of the Government or the public's confidence in the integrity of the Government; or third, individuals appointed by the President, by and with the advice and consent of the Senate, who determine policies to be determined in the nationwide administration of Federal laws.

The amendment further provides that the regulations called for must be prescribed not later than 90 days after the effective date of the legislation, that any revision of such regulations shall be prescribed not later than March 1 of the year in which they are to take effect, and that the regulations shall become effective the first day after the close of the first period of 30 calendar days of continuous session of Congress after they are transmitted to both Houses of Congress, unless the Congress adopts a concurrent resolution of disapproval.

Plainly, the managers for the Senate and the House have compromised on this issue, but, speaking for the Senate conferees, I believe it to be a good compro-

mise which retains the intent of the Senate amendment to further restrict employees with sensitive positions in these particular agencies.

Our understanding of the word "sensitive" is that it covers those positions which the head of the agency is required to designate as sensitive under section 3(b) of Executive Order No. 10450, as amended, or any Federal statute or Executive order which might supercede Executive Order No. 10450. Further, the conferees understand that subchapter I-3 of chapter 732 of the Federal Personnel Manual requires those positions to be designated sensitive that require fiduciary, public contact, or other duties that demand the highest degree of public trust.

The House recedes as well on the amendment proposed by the Senator from Wisconsin (Mr. NELSON) and adopted by the Senate which deletes from the bill those provisions which would require that an employee who becomes a candidate for elective office be placed on leave-without-pay for that purpose not later than 90 days before an election in which he is a candidate. The amendment leaves standing that provision which requires that an employee who is a candidate shall, upon request, be granted accrued annual leave for the purpose of pursuing his candidacy.

While technically the House recedes from the Senate amendment No. 22, which is the Senator from Hawaii's (Mr. FONG's) amendment to do away with the independent Board on Political Activities of Federal Employees and provide that the Civil Service Commission remain responsible for adjudicating violations of the act, that is not the case in fact. The House, for technical reasons, recedes with an amendment, agreed to by the managers on the part of the Senate, which restores the independent Board. Under this amendment, the Civil Service Commission retains investigatory, educational and enforcement authority, but the separate Board composed of three employees appointed by the President, by and with the advice and consent of the Senate, would be the adjudicatory authority.

For all practical purposes, then, the Senate recedes to the House position, strongly held by its conferees, that the prosecutorial and adjudicatory functions should be separated.

Under the House bill, the Board would have had complete discretion in imposing penalties for violations of the act. Two Senate amendments would have provided for mandatory penalties. Senate amendment No. 65, which was sponsored by the Senator from Florida (Mr.

STONE) called for a mandatory 90-day suspension for an employee found to have violated the restrictions on misuse of official authority or influence, as covered in section 7323 of the bill. On this amendment, the House has agreed to recede with an amendment which retains the mandatory penalty provision but reduces the minimum penalty that can be imposed for violating this section to 30 days.

The Senate's managers agreed to recede on the other mandatory penalty provision which appears as Senate amendment No. 66. That is the Senator from Kansas' (Mr. DOLE's) amendment to require that an employee who has been found to have violated sections 7323, 7324, or 7325 on two occasions be removed from employment and thereafter barred from Federal employment.

The Senate conferees also agreed to recede from the Senate position on a committee amendment which slightly altered the terms for notices of alleged violations required by the bill to be served on individual employees charged with violations of the act.

Of considerably more significance, the House recedes from its disagreement over the effective date of the bill. Originally, the House had provided for an effective date 90 days after the date of enactment, while the Senate provisions, added by an amendment by the Senator from Kansas (Mr. DOLE) provides that the amendments made by the bill shall not take effect until January 1, 1977. This concession by the House was important in the mind of the Senate conferees because it provides for more orderly drafting of required regulations, insure that employees can be fully informed of both their rights and prohibitions before they become involved, and serves to some what isolate the issue of the rights of these employees from current political considerations.

The action of the House conferees in agreeing to the Senate's provision on this amendment is but one example, but a good one, of their reasonableness and willingness to consider the position of the Senate in those areas where they were free to do so. The managers on the part of the Senate, including Senators BURDICK, FONG, and STEVENS, are to be commended for their constructive approach to the resolution of the differences between the Houses on this measure. Both sides contributed to a full and free conference, resulting in an agreement that I hope the Senate will now endorse and approve. It is accompanied by concurrent resolution authorizing the Clerk of the House of Representatives to make certain technical corrections in the enrollment of the bill.

Mr. FONG. Mr. President, I rise to urge rejection of the conference report on H.R. 8617, the proposed Federal Employees' Political Activities Act.

As a conferee on this bill, I participated in the conference between the managers of the Senate and the House. Among the several Senate amendments at issue was one I had sponsored. My amendment would retain the Civil Service Commission in its present role as the agency to adjudicate complaint cases under the Hatch Act. I felt strongly that the Commission should not be replaced by a three-member Board of Political Activities of Federal Employees, as proposed in H.R. 8617. I argued for retention of the Civil Service Commission when the bill was debated in the Senate—and my amendment prevailed. By an overwhelming margin of 73 yeas to 17 nays, the Senate approved my amendment.

In conference, I spoke for my amendment. I explained why it would be wasteful and unnecessary to create another Board to hear and decide complaint cases filed under the Hatch Act—a responsibility which is now being carried out effectively and fairly by the Civil Service Commission. But my position did not prevail in conference, and the House managers rejected my amendment.

Because of this and other decisions in the conference which I could not accept because of various provisions in the bill, I declined to sign the conference report.

Four House managers also refused to sign the conference report. They took their fight to the House floor. On Tuesday this week, the conference report was adopted by the House by a narrow margin of only 241 yeas to 164 nays. The "nay" votes are 19 more than the number needed to sustain the expected Presidential veto even if every one of the 435 Members voted on the veto question.

The White House has reported that the President will veto this bill, so we actually are going through a very useless act by adopting this conference report. By comparison, the House vote on final passage of the bill last October 21 was 288 to 119—17 votes short of the total needed as of that date to sustain the anticipated veto. So, obviously, the proponents of H.R. 8617 have been losing ground, and the opponents are gaining strength.

As passed by both the House and the Senate, H.R. 8617 is a misnomer. Its proponents call it a bill to promote "political freedom" for the Federal employee. They claim that it is legislation wanted by the Federal workers so they can engage in political campaigning and political management.

I contend that the situation is just the opposite. As far as the rank and file

Federal employees are concerned, most of them do not want the Hatch Act scuttled. They need and want the protection from political pressures which are provided them by the Hatch Act.

Poll after poll, survey after survey, shows clearly Federal employees prefer to retain the Hatch Act.

Every Senator from Maryland and Virginia—the States with the largest concentration of Federal employees—voted against H.R. 8617.

For example, the junior Senator from Maryland (Mr. BEALL) reports that of about 120,000 responses to a questionnaire among the people of Maryland, 70 percent said they do not favor liberalization of the Hatch Act, while 30 percent said they do.

Within Montgomery County and Prince Georges County—both of which have a very heavy percentage of Federal employees—62 percent of the responses from Montgomery County and 66 percent from Prince Georges County expressed opposition to changing the Hatch Act.

Congressman JOSEPH FISHER, whose district in Virginia has the heaviest concentration of Federal employees outside of Washington, D.C., says 69 percent of the 20,000 constituents who responded to his questionnaire, do not want the Hatch Act changed. His mail indicated that those who want the status quo outnumbered others 8 or 10 to 1.

Congressman GILBERT GUDE of Maryland, whose district has the next highest concentration of Federal employees, says:

I think his [Congressman Fisher's] poll clearly shows what I felt was the case in my district and what I think is the case generally with Civil Service employees across the country.

Congresswoman ELIZABETH HOLTZMAN of New York says the response to her questionnaire showed 2 to 1 against weakening the Hatch Act.

Only 2 out of 3,000 members of the National Federal Executive Institute Alumni Association said they favor legislation to change the Hatch Act.

A congressionally-created Commission on Political Activity of Government Personnel in 1967 authorized the most extensive survey ever undertaken of employee attitudes on political activities. The University of Michigan Survey Research Center, which conducted the survey, reported that of 14 categories of responses concerning their attitudes toward changes in the Hatch Act, the one with the highest response was: "The Hatch Act should remain as is." Only 3 percent of the respondents in that survey said they favored repeal of the Hatch

Act.

The most revealing expression of opposition to changing the Hatch Act came from the widely-respected National Federation of Federal Employees, the largest independent union of Federal career employees, representing 136,000 workers. Its president, Nathan T. Wolkomir, testified that 89 percent of the members polled registered strong support for continuing the Hatch Act as is.

If any other union conducted a similar poll of its members on this question, no such data were offered at the Senate committee hearings.

So, it is clear that the vast majority of Federal employees do not want the Hatch Act scuttled.

Numerous Government agencies and nongovernment groups knowledgeable about the subject have expressed their strong objections to H.R. 8617. To name a few of them:

The U.S. Civil Service Commission, Comptroller General, Office of Management and Budget, Internal Revenue Service, the U.S. Postal Service, National Civil Service League, Federal Executive Institute Alumni Association, National Federation of Federal Employees, Organization of Professional Employees of the U.S. Department of Agriculture, and the Standing Committee on Public Management and Machinery of Government of the National Academy of Public Administration.

The mass media of this country are overwhelmingly opposed to proposals for overhauling or repealing the Hatch Act. Numerous editorials have appeared in newspapers and news magazines across the country to call attention to the dangers of removing the protection of the Hatch Act from Federal employees and thereby opening the door to all-out partisan politics and the revival of the old "spoils system."

I do not think it necessary at this point to review all the many flaws and defects in H.R. 8617. These were enumerated in detail during the Senate debate this month.

But I do wish to underscore the vital point of my argument: that H.R. 8617, if enacted, would cut out the heart of the Hatch Act. I shall not quibble over the rebuttal by proponents of the bill that H.R. 8617 would not repeal the Hatch Act, that it only amends the Hatch Act. Yes, H.R. 8617 would not repeal the Hatch Act in toto. It would not repeal the Hatch Act technically but, in substance, it would cut out the heart of the Hatch Act; it would scuttle the Hatch Act; it would emasculate the Hatch Act.

I say this because the bill would, in fact, eliminate virtually all the restrictions in the current Hatch Act dealing with political management and political campaigns—what I call the heart of the Hatch Act. These are the specific prohibitions on political activities contained in the Code of Federal Regulations—activities such as serving as an officer of a political party; taking part in partisan fundraising; managing a political campaign of a partisan candidate; running as a partisan candidate; soliciting votes for or against a partisan candidate; acting as a poll watcher for a political party or partisan candidate; and other specified activities of a partisan nature.

Wipe out these political activities from the prohibited list and you invite widespread abuses in the Federal Government. It would open the door to weakening the civil service system—a system based on merit in performance and not on favoritism based on partisan politics.

As we celebrate our Nation's Bicentennial, we should be mindful of the historic fact that our Presidents, starting from George Washington, have been concerned about the politicking of Government personnel. Many tried to set proper limits to participation in politics by Federal officials and employees.

One long step in the right direction was taken in 1883, following the shocking assassination of President Garfield by a disgruntled officeseeker, when Congress enacted the first civil service law, establishing the Civil Service Commission and placing restrictions on political activities of Federal personnel.

Another milestone was reached in 1907 when President Teddy Roosevelt issued an Executive order which specifically banned Federal employees from taking part in political management and campaigning.

Still another milestone came with the passage of the Hatch Act in 1939, in the wake of political scandals involving solicitation of funds from WPA workers under coercion from the bosses during the Great Depression of the 1930's.

As the historic record shows, the evolution of the Hatch Act was a long and arduous struggle for clean government.

In providing protection for Federal employees from partisan political pressures, the Hatch Act assured, for the public, the administration of their National Government in an impartial and efficient manner.

It would be a cruel mockery to remove Hatch Act protection from the Federal employee, on one hand, and, on the other, pretend to give them "political freedom"

without that protection. For, in time, the political freedom will be eroded through abuse of liberalized political activities.

And the public, whose tax dollars finance the public payroll, would be short-changed by the politicization of the Federal personnel and the undermining of an impartial, efficient public service.

In summary, to allow Federal employees virtually unlimited partisan political activity by the passage of H.R. 8617 would:

First, be a great disservice to the 2.8 million Federal civil service employees;

Second, inevitably introduce partisan considerations into the administration of Federal programs;

Third, seriously undermine public confidence in the integrity of Government operations;

Fourth, compromise, in the public's eye, Federal employees who actively participate in partisan politics;

Fifth, detract from the efficient administration of the public business;

Sixth, make employees vulnerable to indirect and subtle influences and coercion to support political parties or individuals;

Seventh, inject political considerations in promotions, decisions, job assignments, and similar actions;

Eighth, adversely affect employee morale and efficiency;

Ninth, step backward 70 years to 1907 before President Roosevelt barred political management and campaigning of Federal employees;

Tenth, eventually emasculate the Hatch Act;

Eleventh, eventually return to the spoils system; and

Twelfth, ultimately destroy the merit system in the Federal Government.

For all these reasons, Mr. President, I urge the rejection of the conference report.

The PRESIDING OFFICER. Who yields time?

Mr. MCGEE. Mr. President, I yield myself 1 minute for two comments not contained in the opening remarks I made.

The first is my personal petition to the President to reassess his announced decision to veto this compromise on the updating of the Hatch Act. I say that, Mr. President, because the President's early decision was reached before the Senate had worked its will on many significant compromises, and before the House of Representatives had likewise reached a more moderate position. I believe the President of the United States would find this to be the kind of compromise that would be in tune with

the times, that would be responsible in representative government and still maintain in even firmer ways the key, basic principles in the Hatch Act itself.

Second, Mr. President, the conference report makes this measure easier to put into effect because it does not become operable until January 1 of next year, so it would be in no way involved in the affairs going on in the political arena at this time.

Furthermore, it retains the advantage of advice from the floor of the Senate that we put limitations on sensitive personnel in several of the departments of the Government, and it likewise tightens the enforcement procedures for preserving the basic concepts of the act.

Mr. President, I am willing to yield back the remainder of my time.

Mr. FONG. I yield back the remainder of my time.

ADDITIONAL STATEMENTS SUBMITTED ON CONFERENCE REPORT ON 8617

Mr. DOLE. Mr. President, the Senate-House conference committee on H.R. 8617 has completed its work. The discrepancies between the House and Senate versions of H.R. 8617 have been resolved, and the measure has been sent back to both Houses for final consideration. In reviewing the conference committee's work on this legislation, I can find no reason to change my opposition to the bill and its provisions.

PROVISIONS UNACCEPTABLE

Despite the several minor changes made in the bill by the conferees, I find that my major concern about this legislation still exists. It remains my conviction that those who support this bill must bear the responsibility for demonstrating the need to revise the long-standing Hatch Act, with its protections from political coercion for Federal employees. Our 35 years of experience with the Hatch Act indicate that it is not a perfect solution to the problem of political abuse in our Federal employment system, but there can be little doubt that it has substantially curtailed and prevented improper political pressures on Federal employees. Both experience and commonsense, then, demonstrate that elimination of traditional Hatch Act safeguards against unethical practices should not be undertaken lightly, nor without substantial basis for the change. If there are weaknesses or loopholes that exist under the current Hatch Act, Congress should take steps to do away with them and not with the act itself.

Throughout all the discussions and debate on this issue, I have heard no sound justification for retiring the Hatch Act

or its principal provisions. Far from being barred by law from engaging in politics, the Government employee today enjoys the right to express political opinions, contribute money to political campaigns, run for office as an independent, and vote. Surveys taken among Federal employees themselves fail to indicate any widespread support for changes in the Hatch Act. A number of Federal agencies and departments—including the Office of Management and Budget, the General Accounting Office, the Departments of Treasury and Justice, and the U.S. Postal Service—all oppose the provisions contained in H. R. 8617.

Based on these factors, I cannot find that the proponents of this bill have demonstrated a real need for making these changes in the Hatch Act.

STATUS OF DOLE AMENDMENTS

During the process of ironing out the differences between the two House versions of this legislation, the committee members discarded an amendment which I sponsored to mandate the suspension of any Federal employee from the Federal service who, on two occasions, would violate any prohibited activities as outlined in H.R. 8617. This amendment was approved by the Senate on March 11 by a vote of 53 to 38.

Also, the committee saw fit to make a major change in a second amendment which I sponsored. To retain current Hatch Act restrictions on political activities by employees of the Justice Department, the Central Intelligence Agency, and the Internal Revenue Service. That amendment had passed the Senate on an overwhelming vote of 68 to 23 in the form in which I had originally proposed it. Several members of the Senate Select Committee on Intelligence had given their support to the amendment at that time. Yet, the conferees altered the amendment to give administrative heads of those three agencies the authority to designate which employees should be covered, according to certain criteria including the "sensitive" nature of the Federal employee's particular job.

A third amendment I sponsored, to establish an effective date of January 1, 1977, for H.R. 8617, was accepted by the conferees.

SHOULD KEEP PROTECTIONS

As a "nonpartisan" regulation by nature, the Hatch Act safeguards have applied to members of both major political parties and have provided continuity of personnel throughout the three and a half decades regardless of the changes in administrations. The rank-and-file Fed-

eral employee has been protected from both the obvious and not-so-obvious partisan pressures that would otherwise inevitably flow downward from the administrative and supervisory levels in the civil service system. A variety of opportunities would exist in the course of daily activities to extract political favors and assistance from the Federal labor force should that capability be thrust upon the Government employee, and its use would be limited only by the imagination of the craftiest supervisory bureaucrat who may now or in the future have authority over a portion of the civil service sector.

This very real possibility was cited a few months ago by Civil Service Commission Chairman Robert E. Hampton, who advised Congress that—

If the opportunity to assert partisan political influence or power is available, it will be exercised. . . . Whatever political activity is permitted to Federal employees will quickly become that which is required of them.

After carefully reviewing all the components of H.R. 8617, I feel strongly that its supposed deterrents to political abuse are simply not adequate to the task. Commissioner Donald C. Alexander of the Internal Revenue Service has testi-

fied that it is difficult enough to enforce current Hatch Act restrictions against undue political coercion or influence within his Agency, even though restrictions are extensive and penalties are "pretty severe." If violations of current Hatch Act restrictions are that difficult to prove and adjudicate, how much more difficult would it be to protect the rank-and-file Federal employee from illegal coercion under the loose restrictions mandated by H.R. 8617?

Mr. President, this legislation may pass the Senate again today by a small margin of support, but I continue to feel that this Congress has no real mandate to alter the status quo protections of the Hatch Act. Instead of promoting partisan political involvement in the civil service, we should be concentrating on reducing instances of abuse within the present Federal system. Until there is strong and evident support among rank-and-file Federal employees themselves, it is presumptuous and it is premature for us to initiate major relaxation of Hatch Act protections.

Mr. TAFT. Mr. President, during the recent consideration of the Hatch Act in the Senate, I offered an amendment to prevent Members of Congress from receiving a pay increase during the session in which it is enacted. This provision is similar to the laws in over 25 States. My amendment was permitted a vote and

passed the Senate, 43 to 40. However, it was knocked out of the bill in the conference, because the House felt it was nongermane.

My colleague in the House, CHARLES MOSHER, the original sponsor of the proposal, stated yesterday, that the nongermaneness ruling was puzzling, because the conferees did not seem to mind last year when they included the congressional pay raise provision in a bill dealing with Postal Service personnel policies.

While I think it is a shame that the amendment did not survive the conference, I do believe we have made an important first step in admitting to the public that the present system of raising congressional salaries is fraught with conflicts of interest. The amendment is pending as a bill in the Senate Post Office and Civil Service Committee with several cosponsors, and Congressman MOSHER has an identical bill pending in the House with over 90 cosponsors. I hope they will see action soon.

The PRESIDING OFFICER. All remaining time having been yielded back, the question is on agreeing to the conference report. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Idaho (Mr. CHURCH), the Senator from Washington (Mr. JACKSON), the Senator from Arkansas (Mr. McCLELLAN), the Senator from California (Mr. TUNNEY), and the Senator from Alaska (Mr. GRAVEL) are necessarily absent.

I further announce that, if present and voting, the Senator from Washington (Mr. JACKSON), the Senator from Idaho (Mr. CHURCH), and the Senator from Alaska (Mr. GRAVEL) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Massachusetts (Mr. BROOKE), the Senator from Arizona (Mr. GOLDWATER), the Senator from New York (Mr. JAVITS), and the Senator from Illinois (Mr. PERCY) are necessarily absent.

I further announce that, if present and voting, the Senator from Illinois (Mr. PERCY) would vote "nay."

On this vote, the Senator from New York (Mr. JAVITS) is paired with the Senator from Arizona (Mr. GOLDWATER). If present and voting, the Senator from New York would vote "yea" and the Senator from Arizona would vote "nay."

The result was announced—yeas 54, nays 36, as follows:

[Rollcall Vote No. 109 Leg.]

YEAS—54

Abourezk	Hart, Philip A.	Metcalf
Bayh	Hartke	Mondale
Bentsen	Haskell	Montoya
Biden	Hatfield	Morgan
Bumpers	Hathaway	Moss
Burdick	Hollings	Muskie
Byrd, Robert C.	Huddleston	Nelson
Cannon	Humphrey	Nunn
Case	Inouye	Pastore
Chiles	Johnston	Pell
Clark	Kennedy	Randolph
Cranston	Leahy	Schweiker
Culver	Magnuson	Stevens
Durkin	Mansfield	Stevenson
Eagleton	McClure	Stone
Ford	McGee	Symington
Glenn	McGovern	Talmadge
Hart, Gary	McIntyre	Williams

NAYS—36

Allen	Fong	Roth
Bartlett	Garn	Scott, Hugh
Beall	Griffin	Scott,
Bellmon	Hansen	William L.
Brock	Helms	Sparkman
Buckley	Hruska	Stafford
Byrd,	Laxalt	Stennis
Harry F., Jr.	Long	Taft
Curtis	Mathias	Thurmond
Dole	Packwood	Tower
Domenici	Pearson	Weicker
Eastland	Proxmire	Young
Fannin	Ribicoff	

NOT VOTING—10

Baker	Gravel	Percy
Brooke	Jackson	Tunney
Church	Javits	
Goldwater	McClellan	

So the conference report was agreed to.

Mr. McGEE. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

HOUSE CONCURRENT RESOLUTION 596

Mr. McGEE. Mr. President, I ask for immediate consideration of House Concurrent Resolution 596, directing the Clerk of the House to make certain corrections in the enrollment of H.R. 8617, an act to restore the Federal civilian and Postal Service employees their rights to participate voluntarily, as private citizens in the political processes of the Nation, to protect the such employees from improper political solicitation, and for other purposes.

The PRESIDING OFFICER. Is there objection to the present consideration of the concurrent resolution?

There being no objection, the concurrent resolution (H. Con. Res. 596) was considered and agreed to.

VETO OF HATCH ACT REPEAL

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

VETOING

H.R. 8617, AN ACT TO RESTORE TO FEDERAL CIVILIAN AND POSTAL SERVICE EMPLOYEES THEIR RIGHTS TO PARTICIPATE VOLUNTARILY, AS PRIVATE CITIZENS, IN THE POLITICAL PROCESSES OF THE NATION, TO PROTECT SUCH EMPLOYEES FROM IMPROPER POLITICAL SOLICITATIONS, AND FOR OTHER PURPOSES



APRIL 12, 1976.—Message and accompanying act ordered to be printed as a House Document.

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1976

To the House of Representatives:

I am today returning, without my approval, H.R. 8617, a bill that would essentially repeal the Federal law commonly known as the Hatch Act, which prohibits Federal employees from taking an active part in partisan politics.

The public expects that government service will be provided in a neutral, nonpartisan fashion. This bill would produce an opposite result.

Thomas Jefferson foresaw the dangers of Federal employees electioneering, and some of the explicit Hatch Act rules were first applied in 1907 by President Theodore Roosevelt. In 1939, as an outgrowth of concern over political coercion of Federal employees, the Hatch Act itself was enacted.

The amendments which this bill make to the Hatch Act would deny the lessons of history. If, as contemplated by H.R. 8617, the prohibitions against political campaigning were removed, we would be endangering the entire concept of employee independence and freedom from coercion which has been largely successful in preventing undue political influence in Government programs or personnel management. If this bill were to become law, I believe pressures could be brought to bear on Federal employees in extremely subtle ways beyond the reach of any anti-coercion statute so that they would inevitably feel compelled to engage in partisan political activity. This would be bad for the employee, bad for the government, and bad for the public.

Proponents of this bill argue that the Hatch Act limits the rights of Federal employees. The Hatch Act does in fact restrict the right of employees to fully engage in partisan politics. It was intended, for good reason, to do precisely that. Most people, including most Federal employees, not only understand the reasons for these restrictions, but support them.

However, present law does not bar all political activity on the part of Federal employees. They may register and vote in any election, express opinions on political issues or candidates, be members of and make contributions to political parties, and attend political rallies and conventions, and engage in a variety of other political activities. What they may not—and, in my view, should not—do is attempt to be partisan political activists and impartial Government employees at the same time.

The U.S. Supreme Court in 1973 in affirming the validity of the Hatch Act, noted that it represented—

a judgment made by this country over the last century that it is in the best interest of the country, indeed essential, that federal service should depend upon meritorious performance rather than political service, and that the political influence of federal employees on others and on the electoral process should be limited.

The Hatch Act is intended to strike a delicate balance between fair and effective government and the First Amendment rights of individual employees. It has been successful, in my opinion, in striking that balance.

H.R. 8617 is bad law in other respects. The bill's provisions for the exercise of a Congressional right of disapproval of executive agency regulations are Constitutionally objectionable. In addition, it would shift the responsibility for adjudicating Hatch Act violations from the Civil Service Commission to a new Board composed of Federal employees. No convincing evidence exists to justify this shift. However, the fundamental objection to this bill is that politicizing the Civil Service is intolerable.

I, therefore, must veto the measure.

GERALD R. FORD.

THE WHITE HOUSE, *April 12, 1976.*

CONGRESSIONAL RECORD—HOUSE

April 29, 1976

VETO OF HATCH ACT REPEAL— VETO MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER. The unfinished business is the further consideration of the veto message of the President of the United States on the bill (H.R. 8617) to restore to Federal civilian and Postal Service employees their rights to participate voluntarily, as private citizens, in the political processes of the Nation, to protect such employees from improper political solicitations, and for other purposes.

The SPEAKER. The question is, Will the House, on reconsideration, pass the bill, the objections of the President to the contrary notwithstanding?

CALL OF THE HOUSE

Mr. MONTGOMERY. Mr. Speaker, I make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

Without objection, a call of the House is ordered.

There was no objection.

The call was taken by electronic device, and the following Members failed to respond:

[Roll No. 207]

Andrews, N.C.	Gradison	Pike
Ashley	Harsha	Rees
Bell	Hayes, Ind.	Roberts
Bergland	Hébert	Sarbanes
Bevill	Heckler, Mass.	Scheuer
Bowen	Hinshaw	Sikes
Burton, John	Jones, Ala.	Skubitz
Chisholm	Jones, N.C.	Stark
Conyers	Karath	Stephens
de la Garza	Kastenmeier	Teague
Dellums	Ketchum	Udall
Drinan	Lujan	Ullman
Duncan, Oreg.	Macdonald	Vander Jagt
Erlenborn	Madden	White
Esch	Nichols	Wilson, Tex.
Eshleman	Nix	
Flowers	Pepper	

The SPEAKER pro tempore (Mr. O'NEILL). On this rollcall 383 Members have recorded their presence by electronic device, a quorum.

By unanimous consent, further proceedings under the call were dispensed with.

VETO OF HATCH ACT REPEAL— VETO MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore. The Chair recognizes the gentleman from Missouri (Mr. CLAY) for 1 hour.

Mr. CLAY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise to speak in support of the override of the President's veto of H.R. 8617. This bill simply permits Federal civilian and postal employees the same political rights that are already available to other Americans so long as these activities do not compromise the integrity of public service—conducted while off-duty, outside of Government buildings, and out of uniform.

Both the original House bill and the conference report were overwhelmingly approved by the House. The only significant difference between the two versions is that employees who seek elective office must do so on their own time. They are not guaranteed leave of absence to do so.

The President's rationale for vetoing this bill is entirely without foundation. The facts of the matter are that: First, the bill contains stronger controls against coercion than existing law; second, almost 40 percent of Federal employees either do not understand or cannot explain existing law; third, half of all Federal employees and two-thirds of all postal employees support loosening the existing prohibitions on their political activities according to the only independent survey on this matter; and fourth, there has never been a shred of evidence to support the allegation that voluntary political activity takes anything away from the integrity of the merit system.

It is not enough to say that Federal employees have the right to vote. Voting is merely the bottom line of the complex political process. So long as Federal employees cannot shape and participate in the development of our Nation's political process, they will be second-class citizens.

Of equally great concern to me is the President's reluctance to offer any changes in the antiquated provisions of the Hatch Act—enacted in the heat of passion with inadequate consideration almost 40 years ago. Four years ago the administration assured the Congress that proposed changes in the law would soon be forthcoming. The President has reneged on that promise.

Cabinet-level officials of the Ford administration can participate in partisan politics while on the public payroll. How can the President justify prohibiting Federal employees from doing the same thing on their own time?

Federal employees are entitled to the same political rights as other citizens so long as these activities do not interfere with the impartial administration of good government.

I urge my colleagues, in an act of non-partisan statesmanship, to join me in support of H.R. 8617.

Mr. Speaker, I yield 4 minutes for the purpose of debate only to the gentleman from Maryland (Mr. GUDE).

(Mr. GUDE asked and was given permission to revise and extend his remarks.)

Mr. GUDE. Mr. Speaker, I oppose H.R. 8617, a bill to revise the Hatch Act, and strongly urge my colleagues to vote to sustain the President's veto of the bill here today.

I opposed this bill when it originally passed the House, opposed it in testimony before Senator McGEE's Post Office and Civil Service Committee in the Senate and opposed it when the conference report came to the House several weeks ago. I believe that I have the strong support of my constituents who include a vast number of Government workers.

I am pleased to note that opposition to this bill is steadily increasing. One hundred nineteen members voted against the measure when it originally passed the House. One hundred sixty-four members voted against the conference report 5 months later.

In fact, all four Senators from Virginia and Maryland, the States with the highest percentage of civil servants, voted against the measure. In addition, recent polls taken by Representative HOLTZMAN, Representative FISHER, and Senator J. GLENN BEALL make it quite clear that the rank and file civil servants as well as the public at large do not want these changes.

A survey taken by the National Federation of Federal Employees of its members a few years ago found 89 percent supporting the Hatch Act and only 1 percent favoring its repeal.

Unfortunately, the heads of some organizations, who frankly see themselves gaining greater political muscle, do support the measure. They have lobbied hard for it. A lot of Members of the House having heard very little from their own constituents one way or the other, voted for the bill.

The Hatch Act is what lets Government workers say "no" to partisan demands for time and money and improper influence over the day to day Government decisions that affect all our lives.

The changes in H.R. 8617, although ostensibly barring coercion, would permit Government workers to manage and run in partisan elections. So, say the bill's sponsors, civil servants would be more free. I have argued in turn that these changes will "free" the civil servant to be coerced, "free" him to face enormous partisan pressures, and "free" him

to have to put his job on the line in a complaint against a supervisor seeking political funds.

It was such coercion that originally prompted the enactment of the Hatch Act in 1939. Proliferation of New Deal programs brought about a situation in which Federal workers were systematically coerced into contributing to partisan political candidates.

In a time when minimum wage laws were as low as 25 cents an hour, and when a worker for WPA might get only enough work to make \$17 cash money in a month, the wife of such a worker complained that he was forced to pay \$1 of that meager sum into a political fund.

Another man said he did not want to sign a petition of support for a particular candidate and was fired as "uncooperative."

These New Deal employees who soon made up 40 percent of the Federal work force were the first large group of "unprotected" Federal employees since the Pendleton Act of 1883 which created the Civil Service as we know it today and ended a long-standing spoils system. This Pendleton Act was subsequently followed by Teddy Roosevelt's Executive order in 1907 which prohibited civil servants from using their positions to influence elections. Hence, many of the prohibitions made law by the 1939 Hatch Act had been in existence by regulation since the inception of the Civil Service.

Supporters of this bill stress the fact that such political activity would be voluntary. I submit that such "voluntarism" is substantially limited in an employer-employee relationship.

To protect the civil servant from such coercion, the bill sets out certain so-called safeguards. But these safeguards require that a civil servant complain to a Board on Political Activities. This will happen only if a civil servant is willing to "rock the boat" and risk favorable assignments and promotions.

It is the nature of human beings to seek security for themselves and for their families. If just one promotion-hungry clerk rushes to contribute to his boss's favorite candidate—the pressure to similarly contribute then falls on his colleagues. This is exactly what the personnel director of one of our legislative agencies told me will happen to him if H.R. 8617 becomes law.

We know that subtle racial, religious and sexual discrimination is nearly impossible to uncover and adjudicate. Do we want to add political discrimination to the list?

And that of the appearance of Federal workers on the political scene? Surely, this will undermine the public's

confidence in the neutrality and impartiality of the civil service. In this post-Watergate period, I think that this is the last thing we want to do.

The Hatch Act has been condemned by supporters of this bill for being vague and confusing. Let me remind this House that in a 1973 ruling, the Supreme Court rejected this argument stating and I quote:

Although the prohibitions may not satisfy those intent on finding fault at any cost, they are set out in terms that an ordinary person exercising common sense can sufficiently understand and comply with.

Also, say supporters of this bill, such participation in political activities by civil servants is practiced now—that we might as well eliminate this “double-standard” and make all such activities legal.

The answer, as Congresswoman HOLTZMAN, has pointed out is not to condone it, by legalization, but to stop it by enforcing existing penalties. Once again, I fervently urge my colleagues to sustain this veto which is a disservice to the very individuals it purports to “free.”

Mr. CLAY. Mr. Speaker, I yield 5 minutes for the purpose of debate only to the gentleman from Virginia (Mr. HARRIS).

(Mr. HARRIS asked and was given permission to revise and extend his remarks.)

Mr. HARRIS. Mr. Speaker, as a member of the subcommittee which drafted the bill before us today, H.R. 8617, the Hatch Act revision bill, I would like to commend the distinguished chairman, the gentleman from Missouri, for his excellent leadership in developing this bill and getting it through the Congress.

H.R. 8617 is the “Hatch Act revision bill”; it is not a “Hatch Act repeal” bill. Under this bill, Federal employees would be allowed to participate in political activities voluntarily, off the job, as private citizens. More significantly, H.R. 8617 places into law important, explicit, new protections that do not currently exist. Some of these new provisions follow:

The bill—

Prohibits political activity while on the job, while in a Federal building and while in uniform;

Prohibits Federal and postal employees from using their official authority for a political purpose. For example, it would be illegal for a supervisor to confer a benefit—such as a job, promotion, grant or contract—or to effect a reprisal—such as deprivation of a job, promotion, grant

or contract—based on one's political beliefs or activities;

Prohibits supervisory officials from soliciting and prohibits persons from making political contributions in Government rooms or buildings;

Prohibits the extortion of money from Federal employees for political purposes;

Establishes a mandatory 30-day minimum suspension without pay for any employee found guilty of violating the prohibition against use of official authority and subjects all violators to removal, suspension or other penalties;

Establishes an independent board to adjudicate alleged violations of the law and requires the Civil Service Commission to investigate a violation;

Places the responsibility for disciplining employees in the “excepted service” with the Commission and Board—not the employee's agency as in the present law;

Requires the Civil Service Commission to conduct a continuing program to inform employees of their rights to political participation and the restrictions on their rights; and

Prohibits employees in sensitive positions in such agencies as the CIA, FBI and IRS from engaging in political activities.

It is my belief that these protections preserve a nonpartisan merit system and the impartial administration of our laws. I would be deeply disturbed if this House and this Congress rejected such provisions to keep politics out of the Federal Government. Both proponents and opponents of the Hatch Act as it now stands agree that we must insure the continued impartiality of the civil service, that we must not politicize the bureaucracy. I believe that this bill does just that.

I would like to point out to my colleagues what will happen if we do not override President Ford's veto of this bill. Many Federal employees have written to me, talked to me, and called my office to ask what they can and cannot do under the current Hatch Act. No wonder. The Hatch Act, compounded by a myriad of regulations and 3,000 administrative rulings, creates endless ambiguities of do's and don't's in the employee's mind. For example, Hatch Act regulations list 13 permissible “political” activities. Yet, immediately following this catalog of “rights” is a provision which gives the head of an agency the discretion to prohibit or limit political activities of the agency's personnel. Thus, by administrative fiat, those few

rights can be suddenly negated by a federal official. Additionally, under the law, a Federal employee may "express his opinion as an individual, privately and publicly, on political subjects" but one cannot "address a political gathering for partisan purposes." Government workers are allowed to put a candidate's bumper sticker on his or her private automobile, but it is a violation if he or she puts 20 or 40 stickers on the car, making it appear to be a "campaign wagon."

These acts, permitted activities, raise complicated questions of degree and propriety of activity. It is not fair to subject the employee or the employer to so much discretionary interpretation. In addition to leaving the employee confused, another unfortunate effect of these innumerable gray areas is that employees remain uninvolved, for fear of a mistake and reprisal. Most Federal employees feel inhibited as they do not know what they can and cannot do. I have heard cases of employees who are reluctant to join purely nonpartisan organizations like Common Cause or to subscribe to a political journal. The employee is left in a limbo of confusion and we, the people, lose an important segment of our population in the political processes.

Government needs more citizen involvement, not less. Federal employees have a unique perspective and store of knowledge that can only be enriching to our dynamic democracy. Giving Federal and postal employees these rights to become involved—the same rights as our 200-plus million—will further nourish the vitality of our system.

Another result of the continuance of the current Hatch Act restrictions will be what I call a "ridiculous fraud." In certain areas designated by the Civil Service Commission, like the Washington suburbs, Federal employees can be candidates under an independent banner. Though "independent," they can and do receive a Democratic or Republican endorsement. Everyone is well aware of the candidate's political affiliation; party workers campaign for them. They are partisan in all but the label. They work for the Government during the day; they hold political office at night. They are openly political in all but the name. I believe it is more honest to make the affiliation more official and open.

Another unfortunate effect of the Hatch Act restrictions is that it hampers the Government's efforts to recruit and retain competent employees. All too often we hear, "I don't want to work for the

Government; I don't want to be 'hatched'." Why give up the right to participation when there is no such requirement in the private sector? The Federal Government needs the most competent people we can get. The Hatch Act stands in the way of attracting the best possible public officials.

Some say that public employees will not be able to separate their political views from their work. I remind you that political restrictions on State and local employees have been eased, and we have not seen State and local governments crumble. Additionally, there were dire predictions that giving women the right to vote might bring the downfall of our Government. I have not seen that happen either.

Some argue that political coercion and abuse would proliferate if this bill were enacted. I remind my objectors that coercion and abuse—like top-level arm twisting for contributions for campaign dinners—flourished but a few years ago, culminating in the worst scandal ever to hit the country. Those gross irregularities occurred under the existing Hatch Act. Apparently, it was not effective deterrent.

The President with his veto pen has closed the door to almost 3 million citizens. He has said, "We do not want you to be involved in the affairs of Government." I cannot accept that view.

Mr. CLAY. Mr. Speaker, I yield one minute for the purposes of debate only to the gentleman from Ohio (Mr. SEIBERLING).

Mr. SEIBERLING. Mr. Speaker, I voted against this conference report when it came back to the House. I also voted for the Fisher amendment, which would have put some prohibitive restrictions on political activity by Government employees.

But, I am going to vote to override the veto because, upon further study of the bill as it came out of conference and in discussing it with the chairman, it seems to me that the concerns which were raised about political candidacy of Government employees are adequately taken care of in this bill. Furthermore, it has always troubled me that the Hatch Act violates the spirit of the Constitution in denying a substantial segment of our population the right to political activity which is guaranteed by the Constitution.

With the tremendous increase in the number of people employed by the Federal Government in recent years, the deprivation of their political rights becomes an increasingly serious matter. This bill is carefully drawn to prevent the abuse of their office by Federal employees

for partisan or personal political purposes. It will actually strengthen the law to prevent some of the abuses that were revealed by the Watergate investigations—abuses that the Hatch Act failed to prevent.

For these reasons I will vote to override the veto.

Mr. CLAY. Mr. Speaker, I yield myself such time as I may consume.

Mr. LEVITAS. Mr. Speaker, will the gentleman yield?

Mr. CLAY. I yield to the gentleman from Georgia.

Mr. LEVITAS. Mr. Speaker, I thank the gentleman for yielding to me. I want to state that I voted for this bill when it passed in the Congress because I did not see why we should continue to make Federal employees second-class citizens, and I did not feel they would vote any differently than persons in any large organization as far as exercising their right of franchise or participation in political activities is concerned.

But, since that time, I have received a lot of mail from constituents on both sides of this issue. Some questions were raised that trouble me, and I would like to put these questions to the distinguished gentleman from Missouri.

It has been said, in the mail I received from a few people, that this bill will lead to compulsory unionism; that it will give Federal employee unions great power, and somehow or other it will provide for some type of closed shop operation and union domination of the Federal system. If that is true, I would have to change my mind. I wonder if there is anything in this bill which permits or provides for compulsory unionism, public employee strikes, collective bargaining, checkoffs for political contributions, or the like. If those statements are true then I, for one, would have to vote to sustain. Are those statements true?

Mr. CLAY. That statement is absolutely false. There is no provision in this bill that deals with compulsory unionism or checkoff of political contributions or any of the other misconceptions that are being promoted and orchestrated throughout this country by a series of newspapers who are more concerned, in my opinion, with arousing passions and selling papers than they are in extending first amendment rights of free speech and free assembly. So that is absolutely false.

Mr. LEVITAS. I thank the gentleman.

Mr. CLAY. Mr. Speaker, I yield 2 minutes for the purpose of debate only to the gentleman from Illinois (Mr. MICHEL).

(Mr. MICHEL asked and was given permission to revise and extend his remarks.)

Mr. MICHEL. Mr. Speaker. It seems to be ironic that so many of the same people who are the first to accuse members of the administration with having political motives for just about everything under the sun are now pushing this move to amend the Hatch Act and thus politicize the civil service.

We do not need that. We do not need to make ward-healers out of bureaucrats. Moreover, the American people clearly do not want any such scheme put into effect, and I suspect the reason is that they understand exactly what this move to cripple the Hatch Act means.

That is why they indicated, in a survey done by one of the most prestigious survey firms in the country, decision-making information, that they favored leaving the Hatch Act as it is by a 74 percent to 26 percent margin. Indeed, a breakdown of the responses reveals that there is majority sentiment for this position among every classification of age, race and residence site.

Why? Because the Hatch Act was a good idea when it was enacted in response to some serious scandals in the 1930's, and it is needed today to prevent that sort of thing from happening again.

Those of us from Illinois, who have watched the political machine in Cook County operate, have perhaps a special understanding of these matters, but it does not take a great deal of experience or brilliance to figure out that removing the Hatch Act protection from Federal civil servants would put them at the mercy of the politicians for whom they work.

Mr. CHARLES H. WILSON of California. Mr. Speaker, will the gentleman yield?

Mr. MICHEL. I yield to the gentleman from California.

Mr. CHARLES H. WILSON of California. I thank the gentleman for yielding.

Mr. Speaker, I would like to ask the gentleman a question concerning the poll he mentioned. Is that a poll that was taken of all Federal employees, or a certain segment of them, or how was it conducted?

Mr. MICHEL. As I understand it, it was one of these blanket samplings from Federal employees, as well as the general public.

Mr. CHARLES H. WILSON of California. If the gentleman will yield further, I know there is one Federal em-

ployee organization that has opposed it, an organization which is composed principally of management people, and that is about the percentage of their opposition.

Mr. MICHEL. No. This one is of a broad spectrum as I said, and was broken down as to age, race, and residence classification.

Mr. ASHBROOK. Mr. Speaker, will the gentleman yield?

Mr. MICHEL. I yield to the gentleman from Ohio (Mr. ASHBROOK).

(Mr. ASHBROOK asked and was given permission to revise and extend his remarks.)

Mr. ASHBROOK. Mr. Speaker, I will vote to sustain the President's veto of H.R. 8617, a bill which would effectively repeal the Hatch Act and return Federal employment to the spoils system.

The Hatch Act was adopted in 1939. It was a response to patronage politics and political manipulation in the Federal service. The public was tired of a government that operated like a political machine. The Hatch Act sought to reduce these abuses without unduly restricting the freedom of Government employees to participate in the political process.

As a result, the spoils system was replaced by a merit system. Merit rather than politics determined employment and advancement. Employees were given legal protection from forced participation in political activities or making campaign contributions against their will.

Yes, the Hatch Act was needed because of partisan political abuse. The potential for abuse, moreover, is even greater today than it was in 1939. Rather than slightly more than 900,000 Federal employees, today there are approximately 2.8 million. Rather than a budget of about \$10 billion we now have one in the neighborhood of \$400 billion. If the Hatch Act was needed in 1939 to prevent the Federal bureaucracy from being used for partisan political purposes it is all the more necessary in 1976.

The U.S. Supreme Court noted this danger when it upheld the constitutionality of the Hatch Act in 1973. According to the court, one reason for its enactment was the belief that:

The rapidly expanding Government work force should not be employed to build a powerful, invincible and perhaps corrupt political machine. The experience of the 1936 and 1938 campaigns convinced Congress that these dangers were sufficiently real that substantial barriers should be raised against the party in power—or the party out of power for that matter—using the thousands or hundreds of thousands of

Federal employees, paid for at public expense, to man its political structure and political campaigns.

Many Americans already have a deep distrust of our Nation's public institutions. Enactment of H.R. 8617 would only cast further suspicion on the impartiality of these institutions.

It is imperative that we keep party politics out of Government agencies. We should not return to the discredited spoils system. We should uphold this veto and retain the Hatch Act.

Mr. CLAY. Mr. Speaker, I yield 3 minutes for the purpose of debate only to the gentleman from Virginia (Mr. FISHER).

(Mr. FISHER asked and was given permission to revise and extend his remarks.)

Mr. FISHER. Mr. Speaker, I rise to oppose this measure, and I urge the Members to vote to sustain the veto.

In my judgment, the measure goes too far and it would jeopardize the neutrality and the objectivity of the civil service in exchange for a degree of additional political activity.

Mr. Speaker, my constituents oppose this measure by a wide margin. In my district, there are more Federal employees than in any other district in the country except possibly the District of Columbia itself. I have taken a poll, and I have had over 25,000 returns from it. It comes out about two to one against this measure.

I have met, of course, many times with groups of constituents and judging from their responses, they must be three or four to one against this measure.

These are the very people the measure is intended to help, and in my district, anyway, they overwhelmingly oppose it. They view it as something forced upon them that they do not want.

Mr. Speaker, I would like to make a couple of personal observations. I have worked myself as a Federal employee in the executive branch for many years and I served for a time as an administrative officer of an agency during a very difficult period, the McCarthy era; that is, Senator Joe McCarthy.

I have seen at that time and at other times the mischief and the severe damage that can be done to the civil service in such a period. Such a period occurred more recently, only 2 or 3 years ago, when a strong effort was made under President Nixon to seat White House political types in many of the Federal departments, bureaus, and agencies. This was a real and serious threat to the civil service.

Actually I would gain if this measure passed in terms of my own vote support, because I reckon that a large number of the Federal employees would then be able to be more active politically in my support. But even so, I oppose this measure because I believe it to be untimely and unwise and not wanted by the Federal employees themselves.

Therefore, Mr. Speaker, I urge that the measure not be approved, that the veto be sustained, and that the bill be returned to the committee in the hope that it can come back some time soon in a different form, one that would better combine the extension of right to political activity with adequate protection of the objectivity, the neutrality, and the quality of the civil service.

Mr. CLAY. Mr. Speaker, I yield 5 minutes for the purpose of debate only to the gentlewoman from Maryland (Mrs. SPELLMAN).

(Mrs. SPELLMAN asked and was given permission to revise and extend her remarks.)

Mrs. SPELLMAN. I find it most interesting, Mr. Speaker, to listen to my distinguished colleagues who oppose this bill and who claim that this will bring us back to Watergate and this may bring us back to the days of McCarthy. Yet both McCarthy's days and Watergate took place under the provisions of the current Hatch Act. It is to prevent such occurrences that we so carefully provided for in this legislation.

The act, despite the opinion that some people seem to have of it, is actually a bill which strengthens the law and which strengthens the safeguards and provides new, explicit protections for both the employee and the Government. More importantly, it replaces the current act which deprives more than 3 million citizens of their constitutional freedom—

the freedom to participate in the process of selecting governmental leadership.

Contrary to the President's veto message, the enactment of this measure will not result in the overnight politicizing of the bureaucracy. In fact, 20 of the 24 pages of the bill consist of new protections which will preserve a neutral, non-partisan Government service.

The law as it stands today is such a hodge-podge and such a mish-mash that it is being violated every day by people who are acting in good faith. If we ask the average Government employee if he might put a bumper sticker on his car, he will back off; he is afraid that he must not put a bumper sticker on his car, yet he actually may.

If we ask him, "Would you wear a button for a political candidate?" he will

say, "No," because, of course, he thinks he may not do that. But he may. If his old neighbor up the street calls and says, "John, I cannot walk to the polls and do not have a ride. Would you take me?" he will, of course, take his neighbor. But by doing so he has violated the act as it stands today.

So every day there are violations of the act. Some of the desire to change the law stems from the confusion that the vagueness of present day regulations causes. This very vagueness acts as a restraint against the employee who considers becoming involved in any political action, leaving our political system the poorer for the loss. We all know of the apathy that creeps among the electorate. Why should we continue to maintain the barricades that have kept so many Federal employees who wish to participate from doing so? Particularly today, I should think that we in the Congress would gladly do everything we could to encourage, not discourage, participation in the political process.

One very important point which must be made is that H.R. 8617, as it is reflected in the conference report before us today, increases, rather than decreases Federal employee protection in this area. In keeping with our committee's feeling that any law or legislation restricting political activities of Federal employees should do so clearly and expressly. We worked to carefully detail protections for the rights of those employees in order to avoid the confusion and apathy of the past. So, we have provisions that prohibit the use of official authority or influence for political purposes.

Under this provision supervisors cannot promise benefits for or threaten reprisals against a fellow employee for political actions. The provisions, further forbid coercion of Federal employees to vote or not to vote in any manner other than that which the employee desires, and they forbid coercion, through threat of loss of job or promotion, for example, for not taking part, or for taking part, in any political activities.

Many provisions were incorporated into the bill as safeguard measures to protect Federal employees from coercion and corruption. Apparently, the President has conveniently overlooked all of them.

Perhaps the most important provision of this bill, a provision which the President has addressed, is that one which establishes a centralized organization to which Federal employees may turn if any violations or abuses occur. The Board of

Political Activities of Federal Employees will have the power to hear and decide cases involving violation. As was discussed and agreed to in the conference meeting, this concept of an independent board is absolutely essential. The Civil Service Commission already provides educational, enforcement and investigatory authority. In order to provide the proper balance an independent agency must handle the adjudicative functions.

As a member of the Subcommittee on Employee Political Rights and Intergovernmental Programs, which held extensive hearings on the bill, and as a member of the conference committee, I spent many hours of my first year in Congress involved in debate on the Hatch Act. The major reason for my high degree of involvement in the issue stems from the fact that I represent a district that is very heavily impacted with Federal employees, although a recent court decision is going to take some of them out, and as a result we will be less heavily impacted while the State of Mississippi benefits.

We held subcommittee field hearings around the country, my own district included. What we heard during those hearings was a very strong plea to revise the restrictions of the Hatch Act so that the employees might more freely participate in the political process.

Mr. Speaker, what I heard from my own constituents reflected that plea. I announced to them that I would vote the way they told me to on this issue; and they told me by an overwhelming margin that they wanted changes made.

During a short period of a few weeks, I received hundreds of replies asking for liberalization of the Hatch Act and for liberation for Hatched employees so that they could more freely participate in the democratic process.

Therefore, Mr. Speaker, I think it is important at this point that we recognize that there are a great many people who are being denied the opportunity to be full-fledged citizens.

I am just transmitting the plea of a group of Hatched citizens who asked me to say that all other citizens of this great country of ours are free from political restraints and then ask, "Why are we not?"

Mr. Speaker, what better way is there to commemorate the Bicentennial anniversary of our Nation than by granting political freedom to all citizens, which is really what it was all about when our forefathers won the freedom battle 200 years ago?

Consequently, Mr. Speaker, I ask for support of a veto override.

Let me close by commending Chairman CLAY and his staff for their excellent work in preparing and shepherding this legislation.

The SPEAKER pro tempore (Mr. McFALL). The time of the gentlewoman from Maryland (Mrs. SPELLMAN) has expired.

Mr. CLAY. Mr. Speaker, I yield 1 additional minute to the gentlewoman from Maryland (Mrs. SPELLMAN), for the purpose of debate only.

Mr. CHARLES H. WILSON of California. Mr. Speaker, will the gentlewoman yield?

Mrs. SPELLMAN. I yield to the gentleman from California.

Mr. CHARLES H. WILSON of California. I have been rather surprised by the comments made by those who say their polls have indicated such great opposition to the amendments that have been proposed in this act.

As the gentlewoman knows and found out in her own district, the American Federation of Government Employees, the largest employee organization of Federal employees, has had resolution after resolution approved unanimously at their national conventions. All of the postal organizations, the National Association of Letter Carriers, the American Postal Workers Union, every one of them, by similar unanimous votes, have adopted resolutions without opposition of any sort whatsoever.

Would the gentlewoman from Maryland (Mrs. SPELLMAN) agree with me that there seems to be something peculiar about the stories that we have been hearing here today?

Mrs. SPELLMAN. I announced to people in my district that their mailbox could be their ballot box. I gave them ample opportunity to express their concerns. But the mail from those favoring the change far outnumbered the cards and letters sent by those in opposition.

Mr. CLAY. Mr. Speaker, I yield 5 minutes for the purpose of debate only to the gentleman from Illinois (Mr. DERWINSKI).

(Mr. DERWINSKI asked and was given permission to revise and extend his remarks.)

Mr. DERWINSKI. Mr. Speaker, in a matter of minutes, this body will have the opportunity to make a strong commitment to the restoration of public confidence in government. If we unthinkingly vote to override the veto of the legislation now before us, we will be telling the public that its current disenchantment with the processes of government is justified.

I think the executive council of the highly respected National Federation of Federal Employees summed up the case against H.R. 8617, which, in effect, would gut the 1939 Hatch Act. In urging a Presidential veto of the legislation, the council said:

We believe that if the Hatch Act is weakened, as is implicit in the pending legislation, it will result in further erosion of public confidence in government, already severe, and Federal employees and their leaders who misguidedly have sought legislation to undercut the Hatch Act will find themselves trapped in a maelstrom from which there is no extrication.

Certainly, the Hatch Act is not perfect, but it has, since 1939, been an objective and effective deterrent to the politicization of the civil service system. While it has provided the necessary insulation against "spoils system" politics, it has not deprived Federal employees of their rights to participate in political affairs on a reasonable and appropriate basis.

Despite the weight of evidence to the contrary, proponents of Hatch Act revisions would have us believe that Federal employees are second-class citizens clamoring for political freedom. But even a cursory reading of H.R. 8617 clearly supports the conclusion political freedom is not the issue. What is at stake is a workforce in excess of 2.8 million to be left without protection to resist the manipulations of ambitious Federal employee union leaders who want to dictate to Congress.

There is no conceivable way to preserve an impartial Federal service if it is to be subjected to virtually unrestricted partisan political activity. As recently as 1973, the U.S. Supreme Court looked into the Hatch Act and held the Federal service should depend on meritorious performance rather than political service.

While H.R. 8617 ostensibly was designed to bring political freedom to the Federal employee, its ramifications extend far beyond the Federal sector. In fact, it would jeopardize the political rights of non-Federal employees. How, for instance, could a non-Federal employee compete for political office without fear of reprisal if his un-Hatched opponent happened to be an administrator of some key law enforcement or regulatory agency?

It also has been argued that the Federal workforce is somehow different in character and sophistication today than it was in 1939. Actually, the potential for abuse of the merit system is far greater than it was 37 years ago. In 1939, there

were 920,000 Federal employees compared with more than 2.8 million today. It is a workforce which administers programs and grants involving billions of dollars, and obviously should be free from the pressures of partisan politics.

As the President noted in vetoing H.R. 8617, it would be bad for the employee, bad for the Government, and bad for the public.

Mr. Speaker, we have been debating this for some time. Members have been pretty well inundated with "Dear Colleague" letters. Therefore, I am not going to go into the details of this legislation, but I would like to make two additional points.

The Hatch Act has sustained all court challenges. It is clearly constitutional.

Second, at the time the Hatch Act was passed by a Democratic Congress with a Democratic President to insulate Federal employees from political pressure, there were 900,000 civilian employees. Today there are 2,800,000 civilian Federal employees.

Mr. Speaker, the need for the Hatch Act and for the protection it provides is greater today than it was at the time it was passed.

Just let me read from an editorial from a most prestigious publication, the Washington Star. It reads as follows:

To remove restrictions against engaging in partisan politics—as campaign workers, fund raisers, candidates or whatever—is not to provide freedom or liberation for federal employees. It is to open them to coercion by politicians and labor leaders who would use the massive federal service to pursue their own ends. It is to return the federal service to the spoils system.

The Hatch Act protects, and does not shackle, the federal worker.

There is one last point I would like to make, Mr. Speaker. When I am doing this, I obviously have to divulge my long service and the wear and tear I have suffered in this Chamber.

When I was a freshman in the Congress 18 years ago, the first great issue that hit that Congress was the adoption and passage of the Landrum-Griffin Act. That was supposedly to be a slave labor act, as were told by labor leaders who claimed "If you pass the Landrum-Griffin Act, you will enslave the working man."

The funny thing was that as we went home weekend after weekend and we talked to the rank and file union employees, they said, "Please pass the Landrum-Griffin Act. I am for it. It is just my union leader who is not for it."

That is what we face today. The labor

leaders, especially the Washington-based type are for the passage of this bill. The rank and file Federal employee across the country does not want the bill passed. So if the Members really want to serve their constituents, and those employees, they will vote to sustain the veto.

There is absolutely no grass roots demand from the average citizen nor from the Federal employees to pass this legislation. This is just an effort by the self-appointed spokesmen of the Federal employees to have the Hatch Act emasculated so that manipulation of Federal employees would be in order.

I say that the way to serve the constituents you have who are Federal employees is to vote to sustain the veto of this legislation.

I know of no poll, slanted or otherwise, that could prove that the rank and file Federal employees want this measure passed.

Mr. FISHER. Mr. Speaker, will the gentleman yield?

Mr. DERWINSKI. I yield to the gentleman from Virginia.

Mr. FISHER. Mr. Speaker, I might point out to the gentleman from Illinois and to the Members that not all Federal employee organizations favor this legislation by any means. The National Federation of Federal Employees, a very large organization, opposes it. The Civil Service League opposes it. The American Society for Public Administration opposes it. And I could name several others.

Mr. DERWINSKI. One final statistic, Mr. Speaker, earlier the gentleman from Illinois (Mr. MICHEL) referred to a poll that was taken by the Public Service Research Council, and according to those polled who were public sector union members—public sector union members—61 percent were against changing the Hatch Act. That was the rank and file speaking.

Mr. CLAY. Mr. Speaker, I yield 4 minutes for the purposes of debate only to the gentleman from New York (Mr. SOLARZ).

(Mr. SOLARZ asked and was given permission to revise and extend his remarks.)

Mr. SOLARZ. Mr. Speaker, I rise in support of the bill and in opposition to the President's veto.

In this Bicentennial Year in which we celebrate the 200th anniversary of the Declaration of Independence, it seems to me that the time has come for us to give the 2.7 million Federal civilian employees the same rights to participate in the political process by which our

country is governed as their 210 million fellow citizens. Also at a time of declining participation in the political system in our country, at a time when during the last Presidential election almost 50 percent of the eligible voters in this Nation declined to vote one way or another in that election, it seems to me that the Congress ought to be expanding the franchise rather than restricting it. It seems to me we ought to be encouraging the participation of the American people in our political system rather than discouraging it by maintaining on the books this highly restrictive legislation.

There are those who say in opposition to this legislation that if we permit the Federal employees to actively participate in the political system that it will somehow imperil the integrity of the Federal civil service. Nothing, my friends, could be further from the truth. The fact is that there are many parliamentary democracies around the world which permit their public employees to participate in the political process without any significant disadvantages to their civil service system.

The fact is that in West Germany and in Great Britain and in France, countries in which the civil service plays an infinitely more important role than the civil service plays in our own country, these people are given every opportunity to actively participate in the political process. The fact is that these people are permitted to participate, and nobody has ever suggested that the integrity of the civil service in those great parliamentary democracies have somehow been impugned in the process. The fact is that even here in our own country there are several State and local governments which permit their civil servants to actively participate in the political process, and nobody has seriously suggested that the integrity of those jurisdictions have somehow been impugned by virtue of the fact that they have given their public employees the right to participate in the political system.

So I would suggest that based on the experience of parliamentary democracies abroad and based on the experience of several State and local jurisdictions here in our own country, there is every reason to believe that if this legislation is passed and Federal civil servants are given the opportunity to actively participate in the political process, the integrity of our civil service will not somehow be fatally impugned in the process. The fact is that there are plenty of protections in this legislation which will

enable those Federal civil servants who do not choose to participate in the political process to refrain from doing so without any fear of reprisal against them.

I am personally prepared to concede as a sponsor and supporter of this legislation that there may be an abuse here and there, and that if this bill is passed there may be an employee who is coerced into making a contribution even though the bill provides prohibitions against doing so. There may be employees required to ring doorbells.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. CLAY. Mr. Speaker, I yield 2 additional minutes to the gentleman from New York.

Mr. SOLARZ. There may be an employee here and there who is required to support a candidate against his will. But the fact of the matter is that it is literally inconceivable that under this bill and the protections that are contained within it, we could have the kind of sustained and systematic abuses which existed in 1938 and which led to the passage of the Hatch Act originally. The possibility for the formulation of some kind of massive Federal political machine which the opponents of this legislation contend might somehow come into existence if this veto is not sustained is simply to conjure up an imaginary strawman which has no relationship whatsoever to reality.

So I say let us give this bill a chance. Let us give the men and women who work for the Federal Government an opportunity through their participation to determine whom it is that they will ultimately work for. I say the time has come to give the 2.7 million men and women who work for the Federal Civil Service in this Bicentennial Year an opportunity, in the words of that old Negro spiritual, to say, "Free at last; free at last; thank the Lord we are free at last."

Mr. LEGGETT. Mr. Speaker, I rise in support of the motion to override the President's veto of H.R. 8617, the Hatch Act reform bill.

I will vote to override that veto because I believe that Americans should not be required to give up essential rights of citizenship enjoyed by other Americans simply because they work for the Federal Government. I am well aware that this bill would confer substantial additional responsibilities on our Federal employees. I am confident, however, that they will be equal to the task of properly exercising the rights which would be provided them.

Furthermore, this bill contains a number of safeguards and protections designed to prevent abuse of Federal employees' new rights to participate voluntarily in political activities.

It prohibits political activity while an employee is on duty in a Federal building. It prohibits supervisors from seeking campaign contributions from their employees, and any employee from giving, soliciting, or receiving a contribution in return for another individual's vote. And it would prohibit coercion or intimidation of a Federal employee for any political purpose.

The bill would also create an independent Board on Political Activities of Federal Employees to hear and adjudicate alleged violations of the law as well as to review adverse decisions. In addition, H.R. 8617 would authorize the Civil Service Commission to investigate allegations of violations, and to set a program to inform Federal employees of their right to political participation at least 120 days before primaries or general elections.

Mr. Speaker, for too long we have permitted the Hatch Act to relegate Federal employees to the status of second-class citizens. The welter of administrative rulings which has accrued under the Hatch Act since 1939—upwards of 3,000—makes it impossible to determine with any precision what Federal employees can and cannot do. Since employees are naturally reluctant to risk violations, the ambiguities which have developed tend to inhibit all political participation. Vagueness and ambiguity of this sort about the legal implications of individual conduct is in other contexts clearly in contravention of the concept of due process of law, which is so central to our legal process.

The excessive limitations which the Hatch Act imposes on political activity both discriminate against and impose uncertainties on Federal employees. Why should they not participate in the political process? Let us take a stand for clarifying the law as well as encouraging political expression within the system.

With that I urge my colleagues to support the veto override.

Mr. OTTINGER. Mr. Speaker, I think it is important that we act to override the President's veto of this important legislation. His actions indicate a callous disregard for members of the Federal work force who have for too long been denied the right to participate fully in our democratic process of selecting their representatives.

In my opinion, the most basic reason for supporting the revisions provided for by H.R. 8617 is that the denial of this

freedom for Federal employees to participate in the political system under the same conditions as all other citizens is a deprivation of their equal protection under the laws and is prohibited by the U.S. Constitution. Federal employees are the only group so treated and thus are effectively sterilized from any meaningful participation in Government under the guise of being "protected."

The main criticism of this revision is that it would give Federal employees too great a power over their elected employers, permitting employees to get wage increases and benefits in return for political support. This is nonsense, for the reality is that through their unions, votes, and political action by their families, Federal employees can today make their positions on self-interest issues amply known. In this respect, today's Hatch Act gives the appearance of protection of the public without the reality, while still interfering with the employee's right to openly participate in our political processes.

In terms of protecting employees against political pressures, the present act is equally a sham. It is important to note that the Hatch Act did little to

protect those who fell victim to the scandals of the Watergate era. The institution of a political screening program in Federal personnel offices at agencies such as ACTION and the General Services Administration, among others, is proof that when an administration wants to take advantage of Federal employees, ways will be found.

Much of the criticism directed at the present Hatch Act emphasizes the fact that throughout its history it has been used selectively to punish Federal employees. Those supporting the "right" candidates are ignored, while those supporting "wrong" candidates are disciplined or dismissed. Under present law, enforcement of the Hatch Act is at the discretion of an employee's superiors or the Presidentially appointed Civil Service Commission. An advantage of H.R. 8617 is that it would establish an independent board to adjudicate alleged violations of the law and would establish a mandatory 30-day suspension without pay for any employee found guilty of violating the revised law.

Many groups that have opposed this bill have referred to it as the "Hatch Act repeal bill." H.R. 8617 does not repeal the Hatch Act at all, but rather revises it to grant Federal employees those rights which they should clearly enjoy as American citizens and to protect them from any abuse that might result from

their support for partisan candidates for office. Major reforms in this area include:

First. Allowing Federal and postal employees to participate in political activities voluntarily, away from the job and as private citizens;

Second. Prohibiting political activity on the job, in Government buildings, and while in uniform;

Third. Prohibiting the use of official authority for political purposes;

Fourth. Forbidding solicitation of funds or making of contributions of a political nature inside Government rooms or buildings;

Fifth. Prohibiting employees in certain sensitive positions in agencies such as the CIA, FBI, and IRS from engaging in political activities;

Sixth. Forbidding the extortion of money from Federal employees for political purposes.

Furthermore, these revisions would give the Civil Service Commission and the independent board the responsibility for disciplining employees in the accepted service, an area where there has been much abuse of restrictions on political activity.

I firmly believe, Mr. Speaker, that we must take action to remove the obstacles to full political participation that the Hatch Act has created for Federal employees. I see no reason to believe that this bill will bring about a return to the spoils system that caused its implementation in the first place. The civil service system under which Federal employees are now hired and promoted will still be intact and enforcement against its abuse will be enhanced.

It is simply time to get rid of those portions of the Hatch Act that deprive a limited segment of the population of

basic rights, to clarify the provisions of the law so that it can be implemented fairly in all cases and to institute new and stronger protections against favoritism and harassment that have persisted under the present act. I believe that H.R. 8617 contains the means to accomplish these goals, and it gives me great pleasure to support it.

Mr. DOMINICK V. DANIELS. Mr. Speaker, I rise to urge my colleagues to vote to override President Ford's veto of H.R. 8617, The Federal Employees Political Activities Act of 1975.

This landmark legislation restores to Federal employees their right to participate as private citizens in the political life of the Nation.

Since 1939, Federal workers have been denied this privilege, and they have been

cast into the role of second class citizens as a result.

Their colleagues who work for State and local governments had their political activity rights restored on January 1, 1975, when the Federal Election Campaign Act amendments went into effect.

I believe the time has come to say to 2.8 million Federal workers that they are worthy of the right to participate as private citizens in the political life of the Nation.

The President's veto message ignores the fact that the bill contains built-in safeguards against abuse of the political activity privilege by Federal employees.

The bill contains stronger controls against coercion than the current act.

Further, the administration has not been able to produce evidence that voluntary political activity takes anything away from the integrity of the merit system.

And, Mr. Speaker, let us also face the simple fact of the matter that over 40 percent of all Federal employees do not understand or cannot explain the present law. I believe the time has come to provide these employees with a succinctly worded document that clearly lays out what is and what is not permissible under the law. H.R. 8617 is such a document, and that is why I believe it is essential that it is allowed to replace the current tangled web of confusing administrative decisions that comprise the heart of the Hatch Act.

A recently conducted survey indicates that half of all Federal employees and two-thirds of all postal employees support reform of the Hatch Act to allow voluntary political activity to take place within legally defined guidelines.

It is also important to bear in mind that both the original House bill and the conference report were overwhelmingly approved by the House of Representatives. The only significant difference between the two versions is that employees seeking elective office must do so on their spare time. They are not guaranteed leave of absence to do so.

Mr. Speaker, I hope my colleagues will join with me in voting to override the President's veto on H.R. 8617. It is time to put into place the reasonable and objective recommendations of the commission on political activity of Government personnel, which were made 10 years ago.

In a Bicentennial Year when we are celebrating our independence from arbitrary decisions and policies imposed by a foreign ruler, it is fitting and proper that we restore to those who work for the Federal Government the basic rights

to which our Founding Fathers were so deeply committed.

Mr. ANDERSON of Illinois. Mr. Speaker, I intend to support the President's veto of these Hatch Act amendments and vote against this attempt to override that veto. I am particularly concerned by the extent to which this legislation would permit the increased politization of Federal civil servants at the Federal level. I read with great interest the final report issued by the Watergate Special Prosecution Force issued last October. I was particularly struck by the report's recommendation that existing prohibitions on political activities be extended to all employees of the Justice Department, including the Attorney General. This recommendation in turn set me to thinking about just how opening the way for all Federal employees to run for Federal office, and actively campaign on behalf of candidates for Federal office would be interpreted by the public in the wake of Watergate.

Presumably, this bill is in part designed to tighten up on direct and indirect pressures on a Federal employee by those in official authority to take part in activities aimed at influencing an election. And yet, as Comptroller General Staats of the GAO testified on this bill, this would be "virtually impossible to monitor or control." He also testified that, "any active participation by a Federal employee in political activities could involve or give the appearance of a conflict of interest situation." And he went on to testify that the bill would "place an unmanageable administrative burden on the merit system and would dilute the protections afforded Federal employees by the Hatch Act."

In short, Mr. Speaker, this is the wrong bill at the wrong time moving in the wrong direction. If anything, on the basis of our Watergate experience, we should be moving to extend the protection of the current Hatch Act to those Federal employees not now covered who are in sensitive positions from which power could be used for partisan political ends.

Mr. Speaker, I am sympathetic with those Federal employees who feel that certain of their political rights as citizens are unnecessarily proscribed by the present Hatch Act. When this bill was originally before us I voted for the Fisher amendment to permit these employees to engage in partisan political activities at the State and local level, including running for part-time offices at those levels. If this veto is sustained, as I think it should be and will be, I intend to help work for a compromise which incorporates the provisions of that Fisher

amendment. But this veto must be sustained because of the great potential for abuse of power it poses for our Federal civil service system. I urge defeat of the motion to override.

Mr. BEDELL. Mr. Speaker, I rise in support of the motion to override the Presidential veto of H.R. 8617, the Federal Employees' Political Activities Act of 1975.

As an original cosponsor of this measure, I was greatly disappointed by the President's decision to veto this major reform bill. In my view, H.R. 8617 is sound, responsible legislation which is long overdue and which is in the best interest of our Nation.

In his veto message, President Ford contends that current law strikes an adequate balance between "fair and effective government and the first amendment rights of individual employees." I do not agree. In my judgment, the original Hatch Act, promulgated over a quarter century ago, is unfairly and unnecessarily restrictive, and does not properly serve its intended objective. It is time to clarify and carefully delineate the political rights of Federal employees.

In considering this issue, it is important to understand what the current Hatch Act means in practice. This statute expressly prohibits Federal employees from engaging in political activities at any time. Thus, these individuals are currently denied the opportunity to participate in the political process which is afforded virtually all other citizens.

In my opinion, it is unfair to say that people who work in municipal or county government, employees of the telephone or electric companies, those who work for the United Parcel Service, and almost everyone else in our society—including Cabinet officers and members of the White House and congressional staffs—may engage in partisan political activities, but the rural postman or civil servant cannot. What an employee does in his or her spare time should not be of concern to the Government, as long as it does not affect efficiency on the job.

H.R. 8617 directly addresses this situation and seeks to correct it, without jeopardizing the integrity of our neutral nonpartisan civil service. The thrust of the legislation is twofold. First, it would permit all Federal civilian and postal employees to engage in political activities voluntarily and off-duty as private citizens. And second, it provides substantive safeguards against coercion or the use of official authority to dictate political activity.

At this point, I would like to emphasize that I am acutely aware of the need to protect against the politicization of Federal service. The original intent of the Hatch Act—namely to prevent improper political pressure on Federal employees—is no less valid today than it was in 1939. H.R. 8617 recognizes this fact and takes great care to insure that while Federal employees are granted the right to participate in the political process, they do so only as private citizens and without involvement of their official authority or influence. It is absolutely essential that any Hatch Act reform legislation strike a balance between the potentially competing interest of individual freedom of expression and of a politically neutral civil service. In my view, H.R. 1617 successfully achieves such a balance.

Mr. Speaker, I believe that the right of all Americans to participate fully in the electoral process of their country is the cornerstone of the democratic government which we hold so dear. It seems unfair to me to deny this basic right to 2.8 million Federal civilian and postal employees.

I feel very strongly that this country needs more grassroots political activity, not less. H.R. 8617 will provide an opportunity for an important segment of our society to participate in the political process without impairing in any way the effectiveness of good government. I urge my colleagues to override this veto and enact this important piece of legislation into law.

Mr. FORD of Michigan. Mr. Speaker, I rise in support of overriding the President's veto of the Federal Employees Political Activities Act of 1975. This badly needed legislation was designed to reform the archaic Hatch Act by restoring to Federal civilian and Postal Service employees their rights to participate voluntarily as private citizens in the political process, to protect these employees from discrimination for their political activities and protect them from improper political solicitations.

The bill was supported by virtually every major organization which represents Federal and postal employees including American Federation of Government Employees, the National Federation of Federal Employees, the National Treasury Employees Union, the National Association of Letter Carriers, the American Postal Workers Union, the National Association of Government Employees, and the National Association of Postal Supervisors.

H.R. 8617 provides an opportunity to reform the present archaic system which

has not been altered since 1939. Conditions have changed so much since then that the provisions of the Hatch Act are totally irrelevant today. The entire political process has undergone numerous and extensive changes; court decisions in the intervening years have strongly emphasized that all Americans should enjoy the freedoms of speech and association; and Federal and postal employees are now able to protect themselves from undue pressures because they have the right to organize into unions.

Despite all these changes, however, under the current law, Federal employees are still denied the basic freedoms of speech, political association, and the right to hold public office now enjoyed by all other Americans. This bill, which the President vetoed, will restore these freedoms to Federal and postal employees. The current law forces anyone choosing to serve his or her Government by serving in the Federal or Postal Service to also make the simultaneous choice to become a second-class citizen. The Hatch Act not only forces Government employees to forgo the basic rights I have mentioned but also denies them the opportunity to take political action to have these rights restored. Without these basic freedoms of speech and association, the Government employee simply does not have the requisites of freedom available to any other American citizen.

I might add at this point, Mr. Chairman, that we recently saw in Massachusetts a perfect example of this, when even a man serving a prison sentence was able to run for public office.

Mr. Speaker, some opponents of this legislation argue that Federal and postal employees have enough political freedom merely because they have the right to vote. I would like to remind my colleagues who feel this way that even the government workers in the Soviet Union have the right to vote.

Restoring these basic rights to Federal and Postal workers would also give our political process a badly needed shot in the arm by providing our political system with the influx of the participation of an additional 3½ million persons. I need only remind my colleagues that we can certainly use more participation when we consider that only 38 percent of the electorate participated in our most recent elections.

Further, Mr. Speaker, the adoption of this bill will strengthen rather than diminish the protection afforded Federal and Postal employees.

After conducting extensive hearings, the committee stated in its report:

No conclusive evidence was presented during the hearings that voluntary political activity by Federal employees endangered the integrity of the merit system.

This bill strengthens existing protections by spelling out clearly the prohibitions against use of official authority or influence to coerce another Federal employee in any manner. It also establishes a new mechanism, the Board on Political Activities of Federal Employees, to prevent any coercion by supervisors and it will enable the Civil Service Commission to focus its energies on the task of educating employees and seeking out real violations of the law.

Mr. Speaker, I urge my colleagues to override the President's veto of H.R. 8617. To do otherwise is to maintain a system that forces on Federal and Postal employees a second class citizenship, and denies them an opportunity for improved protections against discrimination for political reasons.

Mr. FRENZEL. Mr. Speaker, when this Hatch Act repeal bill passed the House the first time, I voted for it. I believed then, as I do now, that the Hatch Act needs revision.

I voted for the bill because I hoped that its fatal flaws might be improved in the Senate. All it needed was the addition of the Fisher amendment. The President said he would sign a Hatch Act revision with the Fisher amendment, and I would certainly vote for it.

But the Senate did not add the amendment. The public employee polls indicate they do not want this bill either. Therefore, Members of Congress in both Houses who represent the largest concentration of public employees have voted against it, as I do today.

It is my hope that this sustained veto will cause the passage of a subsequent Hatch Act revision with a Fisher amendment.

Mr. RIEGLE. Mr. Speaker, I want to urge my colleagues to join me in voting to override the President's veto of H.R. 8617—his 48th veto in 20 months as President—in order to restore basic rights as U.S. citizens to the nearly 3 million employees of the Federal Government and the U.S. Postal Service.

One of the results of the Watergate experience was the realization in the Congress that the Hatch Act, which governs the political conduct of Federal employees, was badly in need of reform. The numerous and conflicting interpretations of this act by the Civil Service Commission have made it a maze of contradictions and ambiguities which allowed

some Federal employees to interpret this law to their own particular purpose. On the other hand, the great majority of Federal employees have been afraid to participate in any political activities because of the impossibility of determining precisely what is and is not prohibited.

Congress has made numerous attempts in recent years to open up the political process equally to all Americans. The first attempt to do this was the passage of the Civil Rights Act of 1957. This was followed by the Voting Rights Act in 1965 and legislation allowing 18-year-olds to vote. In addition, proposals to allow post-card registration are still being considered. These actions have all been prompted by the belief that our country's political system is based on the fundamental right of all our citizens to participate fully in our political system. Today we have the opportunity to restore full citizenship to Federal employees and postal workers by allowing them to once

Of course, we must protect Federal employees from coercive or involuntary political activity, however, this must be balanced with a Federal employees rights to free speech. I believe the Congress has managed to achieve this balance in H.R. 8617, the Federal Employees' Political Activities Act. This bill amends the Hatch Act to allow Federal employees the right to participate voluntarily in the political process, including running for office and participating in political campaigns. At the same time, it strengthens protections for Federal employees from coercion and political pressure by their superiors.

It is my belief that passage of this bill will not allow anyone to be pressured into political action or politicize the civil service as President Ford contends; rather, it will allow Federal workers and postal employees to assume the political responsibility that is the right of every other American. I believe it is particularly appropriate in our Bicentennial Year to enact the Federal Employees' Political Activities Act and finally grant political freedom to all Americans.

[Mr. CLAY addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

GENERAL LEAVE

Mr. CLAY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the veto message under consideration.

The SPEAKER pro tempore (Mr. McFALL). It there objection to the request of the gentleman from Missouri?

There was no objection.

Mr. CLAY. Mr. Speaker, I move the previous question.

The previous question was ordered.

The SPEAKER pro tempore. The question is, will the House, on reconsideration, pass the bill, the objections of the President to the contrary notwithstanding?

Under the Constitution, this vote must be determined by the yeas and nays.

The vote was taken by electronic device, and there were—yeas 243, nays 160, not voting 29, as follows:

[Roll No. 208]

YEAS—243

Abzug	Gibbons	Oberstar
Adams	Gilman	Obey
Addabbo	Ginn	O'Hara
Alexander	Green	O'Neill
Allen	Hall	Ottinger
Ambro	Hamilton	Passman
Anderson,	Hanley	Patten, N.J.
Calif.	Hannaford	Patterson,
Andrews, N.C.	Harkin	Calif.
Andrews,	Harrington	Pattison, N.Y.
N. Dak.	Harris	Perkins
Annunzio	Hawkins	Peyser
Ashley	Hays, Ohio	Pike
Aspin	Hechler, W. Va.	Preyer
Badillo	Hefner	Price
Baldus	Heinz	Rangel
Baucus	Helstoski	Rees
Beard, R.I.	Hillis	Reuss
Bedell	Horton	Richmond
Bergland	Howard	Riegle
Biaggi	Howe	Rinaldo
Biester	Hubbard	Risenhoover
Bingham	Hughes	Rodino
Blanchard	Hungate	Roe
Blouin	Jacobs	Roncallo
Boggs	Jeffords	Rooney
Boland	Jenrette	Rose
Bolling	Johnson, Calif.	Rosenthal
Bonker	Johnson, Colo.	Rostenkowski
Bowen	Jones, Ala.	Roush
Brademas	Jones, Tenn.	Roybal
Breaux	Jordan	Russo
Brinkley	Karth	Ryan
Brodhead	Kastenmeier	St Germain
Brooks	Keys	Santini
Burke, Calif.	Koch	Sarasin
Burke, Mass.	Krebs	Scheuer
Burton, John	Krueger	Schroeder
Burton, Phillip	LaFalce	Seiberling
Carney	Leggett	Sharp
Carr	Lehman	Shipley
Chisholm	Lent	Sisk
Clay	Levitas	Slack
Cochran	Litton	Smith, Iowa
Collins, Ill.	Lloyd, Calif.	Solarz
Conte	Lloyd, Tenn.	Spellman
Conyers	Long, La.	Staggers
Corman	Lundine	Stanton,
Cornell	McCormack	James V.
Cotter	McDade	Stark
Coughlin	McFall	Steed
D'Amours	McHugh	Stokes
Daniels, N.J.	McKay	Stratton
Danielson	Maguire	Stuckey
Davis	Matsunaga	Studds
Delaney	Mazzoli	Symington
Dellums	Meeds	Thompson
Dent	Melcher	Thornton
Derrick	Metcalfe	Traxler
Diggs	Meyner	Tsongas
Dingell	Mevinsky	Udall
Dodd	Mikva	Van Deerlin
Downey, N.Y.	Miller, Calif.	Vander Veen
Drinan	Mills	Vanik
Early	Mineta	Vigorito

Eckhardt	Minish	Walsh
Edgar	Mink	Waxman
Edwards, Calif.	Mitchell, Md.	Weaver
Eilberg	Mitchell, N.Y.	Whalen
Emery	Moakley	Wilson, C. H.
Evans, Colo.	Moffett	Winn
Evans, Ind.	Mollohan	Wirth
Evins, Tenn.	Moorhead, Pa.	Wolf
Fary	Morgan	Wright
Fascell	Moss	Yates
Fithian	Mottl	Yatron
Flood	Murphy, Ill.	Young, Alaska
Foley	Murphy, N.Y.	Young, Ga.
Ford, Mich.	Murtha	Young, Tex.
Ford, Tenn.	Natcher	Zablocki
Fraser	Neal	Zeferetti
Gaydos	Nedzi	
Gaiamo	Nowak	

NAYS—160

Abdnor	Ashbrook	Beard, Tenn.
Anderson, Ill.	AuCoin	Bennett
Archer	Bafalis	Breckinridge
Armstrong	Bauman	Broomfield

Brown, Mich.	Haley	Pettis
Brown, Ohio	Hammer-	Pickle
Broyhill	schmidt	Poage
Buchanan	Hansen	Pressler
Burgener	Harsha	Pritchard
Burke, Fla.	Hébert	Quie
Burleson, Tex.	Heckler, Mass.	Quillen
Burlison, Mo.	Henderson	Randall
Butler	Hicks	Regula
Byron	Hightower	Rhodes
Carter	Holland	Robinson
Cederberg	Holt	Rogers
Chappell	Holtzman	Rousselot
Clancy	Hutchinson	Runnels
Clausen,	Hyde	Ruppe
Don H.	Ichord	Satterfield
Clawson, Del	Jarman	Schneebeli
Cleveland	Johnson, Pa.	Schulze
Cohen	Jones, Okla.	Sebelius
Collins, Tex.	Kasten	Shriver
Conable	Kazen	Shuster
Conlan	Kelly	Sikes
Crane	Kemp	Smith, Nebr.
Daniel, Dan	Kindness	Snyder
Daniel, R. W.	Lagomarsino	Spence
Derwinski	Landrum	Stanton,
Devine	Latta	J. William
Dickinson	Long, Md.	Steelman
Downing, Va.	Lott	Steiger, Ariz.
Duncan, Oreg.	McClory	Steiger, Wis.
Duncan, Tenn.	McCloskey	Stephens
du Pont	McCollister	Sullivan
Edwards, Ala.	McDonald	Symms
English	McEwen	Talcott
Fenwick	McKinney	Taylor, Mo.
Findley	Madigan	Taylor, N.C.
Fish	Mahon	Teague
Fisher	Mann	Thone
Flynt	Martin	Treen
Forsythe	Michel	Ullman
Fountain	Milford	Vander Jagt

Frenzel	Miller, Ohio	Waggonner
Frey	Montgomery	Wampler
Fuqua	Moore	Whitehurst
Goldwater	Moorhead,	Whitten
Gonzalez	Calif.	Wiggins
Goodling	Mosher	Wilson, Bob
Grassley	Myers, Ind.	Wydler
Gude	Myers, Pa.	Wylie
Guyor	O'Brien	Young, Fla.
Hagedorn	Paul	

NOT VOTING—29

Bell	Hayes, Ind.	Nolan
Bevill	Hinshaw	Pepper
Brown, Calif.	Jones, N.C.	Railsback
de la Garza	Ketchum	Roberts
Erlenborn	Lujan	Sarbanes
Esch	Macdonald	Simon
Eshleman	Madden	Skubitz
Florio	Mathis	White
Flowers	Nichols	Wilson, Tex.
Gradison	Nix	

The Clerk announced the following pairs:

On this vote:

Mr. Brown of California and Mr. White for, with Mr. Jones of North Carolina against.

Mr. Nix and Mr. Hayes of Indiana for, with Mr. Roberts against.

Mr. Nichols and Mr. Pepper for, with Mr. Erlenborn against.

Mr. Sarbanes and Mr. Simon for, with Mr. Bevill against.

Mr. Florio and Mr. Macdonald of Massachusetts for, with Mr. Lujan against.

Mr. Noland and Mr. Madden for, with Mr. Skubitz against.

Mr. Mathis and Mr. Charles Wilson of Texas for, with Mr. Gradison against.

Mr. Flowers and Mr. de la Garza for, with Mr. Eshleman against.

Mr. KAZEN changed his vote from "yea" to "nay."

So, two-thirds not having voted in favor thereof, the veto of the President was sustained and the bill was rejected.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. O'NEILL). The message and the bill are referred to the Committee on Post Office and Civil Service.

The Clerk will notify the Senate of the action of the House.

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